



California Regulatory Notice Register

REGISTER 2008, NO. 22-Z

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MAY 30, 2008

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by Thomson West.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

CONFLICT-OF-INTEREST CODES

AMENDMENT

MULTI-COUNTY: Dry Creek Elementary School District

A written comment period has been established commencing on **May 30, 2008** and closing on **July 14, 2008**. Written comments should be directed to the Fair Political Practices Commission, Attention **Ashley Clarke**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the

proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **July 14, 2008**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

CONFLICT-OF-INTEREST CODES

AMENDMENT

STATE AGENCY: Department of Consumer
Affairs

A written comment period has been established commencing on **May 30, 2008** and closing on **July 14, 2008**. Written comments should be directed to the Fair Political Practices Commission, Attention **Ashley Clarke**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

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The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the

proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **July 14, 2008**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

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Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

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TITLE 4. CALIFORNIA HORSE RACING BOARD

TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND RULE 1843.2. CLASSIFICATION OF DRUG SUBSTANCES

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1843.2, Classification of Drug Substances. The proposed amendment would reclassify the anabolic steroids boldenone, nandrolone, stanozolol and testosterone, which are listed on the form California Horse Racing Board (CHRB) Penalty Category Listing By Classification (5/08). The Penalty Category Listing By Classification is incorporated by reference in Rule 1843.2. The proposed amendment would reclassify the anabolic steroids from Class 4 drug substances to Class 3 drug substances and change the penalty class from Category D to Category B making the penalty more substantial.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, July 17, 2008**, or as soon after that as business before the Board will permit, at the **Del Mar Surfside Raceplace, 2260 Jimmy Durante Boulevard, Del Mar, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on July 14, 2008**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
Fax: (916) 263-6042
E-Mail: harolda@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19580, 19581 and 19582, Business and Professions Code. Reference: Section 19580, 19581 and 19582, Business and Professions Code.

Business and Professions Code sections 19580, 19581 and 19582 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19580, 19581 and 19582, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19580 provides that the Board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in California. Business and Professions Code section 19581 states no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and the composition thereof. Business and Professions Code section 19582 provides that violations of Business and Professions Code section 19581, as determined by the Board, are punishable in regulations adopted by the Board, and that the Board may classify violations based upon each class of prohibited drug substances, prior violations within the previous three years and prior violations within the violator's lifetime.

The Board proposes to amend Rule 1843.2, Classification of Drug Substances. Under the proposed amendment, the anabolic steroids boldenone, nandrolone, stanozolol and testosterone would be reclassified from

Class 4 drug substances to Class 3 drug substances and the penalty class for these drugs would change from category D to category B. Anabolic steroids are a class of drugs that mimic the male hormone testosterone. They are also referred to as androgenic-anabolic steroids. Anabolic steroids have a long history of abuse in human and equine athletics, and are prohibited in most major racing jurisdictions around the world including Ireland, England, France, Germany, Dubai, Hong Kong, Japan and Australia. They have not been prohibited or effectively regulated in the United States, including California, and are currently in common use. A national movement to regulate anabolic steroids began over the last several years in American horse racing which has paralleled similar efforts in human professional sports. Australia had a similar history of unregulated anabolic steroid use in horse racing and banned the drugs nearly a decade ago with no disruption in their racing. The Racing Medication and Testing Consortium (RMTC), Racing Commissioners International (RCI), Jockey Club, and Grayson/Jockey Club Welfare and Safety of the Racehorse Summit have all called for the regulation of anabolic steroids in American horse racing.

A proposal to reclassify drug substances and establish penalties for medication violations by amending Rule 1843.2, Classification of Drug Substances, and adding Rule 1843.3, Penalties for Medication Violations including the anabolic steroids is currently undergoing a 30-day review at the Office of Administrative Law (OAL) (Regulatory Action Number 2008-0411-03SR). The review of these regulations will not be completed until late May 2008. This regulatory action classifies all androgenic anabolic steroids as Class 2 or Class 3 drug substances, with the exception of boldenone, nandrolone, testosterone and stanozolol, as they were the subject of a related amendment to Rule 1844, Authorized Medication, which was approved by the OAL in May 2008 (Regulatory Action Number 2008-0401-04S). The amendment to Rule 1844 established threshold levels for boldenone, nandrolone, testosterone and stanozolol. Testosterone, nandrolone, and boldenone are endogenous anabolic steroids. Endogenous means they occur naturally. The normal levels of these endogenous anabolic steroids in the horse have been well established in urine, and the regulatory threshold levels the Board established under Rule 1844 have a wide safety margin. However, boldenone is manufactured as Equipoise; nandrolone is manufactured as Durabolin; and testosterone is manufactured as generic testosterone. The Board established a threshold level for stanozolol, an exogenous, manufactured anabolic steroid under Rule 1844. Stanozolol is an FDA approved anabolic steroid for horses sold as Winstrol. All

four of these anabolic steroids are readily available as pharmaceuticals.

The Board is now proceeding to prohibit anabolic steroids in horses competing in racing in California except as allowed under Rule 1844. The proposed amendment to Rule 1843.2 will reclassify boldenone, nandrolone, testosterone and stanozolol as Class 3 drugs and Category B penalties. This will allow the Board to redistribute the purse and impose a substantial penalty for the trainer or other licensee responsible for an overage of the reclassified anabolic steroids.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1843.2 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1843.2 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1843.2 does not affect small businesses because horse racing is not a small business under Government Code section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: harolda@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden, Analyst
Policy and Regulations
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the

modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 4. CALIFORNIA HORSE RACING BOARD

TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND RULE 1853. EXAMINATION REQUIRED

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1853, Examination Required. The proposed amendment would allow a horse to run without shoes provided that its unshod participation is declared at the time of entry and noted in the official program.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, July 17, 2008**, or as soon after that as business before the Board will permit, at the **Del Mar Simulcast Facility, 2260 Jimmy Durante Boulevard, Del Mar, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on July 14, 2008**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Colleen Germek, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 274-6049
Fax: (916) 263-6022
E-Mail: colleeng@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420 and 19440, Business and Professions Code. Reference: Sections 19420 and 19440, Business and Professions Code.

Business and Professions Code sections 19420 and 19440 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19420 and 19440, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 provides jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the Board. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to, adopting rules and regulations for the protection of the public and the control for horse racing and pari-mutual wagering.

The Board proposes to amend Rule 1853 by adding a new subparagraph (b) to allow a horse to race unshod provided the horse's condition is declared at the time of entry and noted in the official program. Requiring that declarations of a horse's condition are made at the time of entry ensures consistency in how and when the information regarding the horse is reported. It also ensures the horse's unshod condition makes publication

deadlines to be included in the official program. Under CHRB Rule 1454, Board May Direct Notices on Program, the Board may direct associations to publish in the program any information and notices to the public as it deems fit. The official program provides necessary information to the wagering public to assist them in their wagering decisions.

There also exists a school of thought that an unshod horse is a healthier, happier horse. The natural hoof, according to this belief, has evolved to provide the optimal amount of traction, shock absorption, and protection; therefore, wearing metal shoes may not always be the best option for a horse, particularly in a race. Persons who subscribe to this philosophy embrace the option to race unshod horses. Eliminating the mandatory shoe requirement would give individuals the option to race a horse unshod, provided the horse's "unshod" participation in such race is declared at time of entry and noted in the official program. There are currently thirteen racing jurisdictions in the United States that allow a horse to run barefoot.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.
Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1853 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1853 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1853 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Colleen Germek, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 274-6049
E-mail: colleeng@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Harold Coburn, Regulation Analyst
Telephone: (916) 263-6397
E-mail: harold@chrb.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Colleen Germek, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are suffi-

ciently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulations should be sent to the attention of Colleen Germek at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Colleen Germek at the address stated above.

BOARD WEB ACCESS

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TITLE 4. CALIFORNIA HORSE RACING BOARD

TITLE 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND RULE 1850. POSTERIOR DIGITAL NEURECTOMY

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1850, Posterior Digital Neurectomy. The proposed action would prohibit any horse that has had a posterior digital neurectomy after October 1, 2008 from racing in California.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, July 17, 2008**, or as soon after that as

business before the Board will permit, at the **Del Mar Surfside Raceplace, 2260 Jimmy Durante Blvd., Del Mar, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on July 14, 2008**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
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1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
Fax: (916) 263-6042
E-Mail: harolda@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440 and 19580, Business and Professions Code. Reference: Section 19580, Business and Professions Code.

Business and Professions Code sections 19420, 19440 and 19580 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Business and Professions Code section 19580.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 states jurisdiction and supervision over meetings in California where horse races with wagering on their results are held, and over all persons or things having to do with the operation of such meetings, is vested in the Board. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to, adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19580 states the Board shall

adopt regulations to establish policies, guidelines and penalties relating to equine medication to preserve and enhance the integrity of horse racing in California.

A posterior digital neurectomy, commonly known as "heel nerving," is a procedure where the posterior digital nerves of a horse's hoof are transected with a scalpel, laser or other means to desensitize the posterior portion of the foot. In racehorses the procedure is primarily used for wing fractures of the coffin bone, navicular disease and other chronic conditions of the foot. A horse that has undergone a posterior digital neurectomy can feel its foot; it just cannot feel the heel of its foot. If the horse puts pressure on its foot it can feel where it is, or where it is running, and so it does not cause the horse to lose stability and that is why heel nerved horses have been permitted to run in California. However, the procedure is currently not common among California racehorses due to improved diagnostics, medications and therapeutic shoeing. At the fall 2007 Santa Anita race meeting there were only two horses on the list of nerved horses (This list is currently a requirement of Rule 1851, List of Nerved Horses). Because the therapeutic value of posterior digital neurectomy is not vital to horse racing, and so few horses currently racing have undergone the procedure, the Board has determined that heel nerved horses should no longer be allowed to run in California.

Rule 1850 currently allows a nerved horse to race under specific conditions. The proposal to amend Rule 1850 discontinues the racing of heel nerved horses. Subsection 1850(a)(4) provides that a horse that has undergone a posterior digital neurectomy before October 1, 2008 is eligible to race. This prevents any horse that has had the procedure after October 1, 2008 from racing in California. There are some heel nerved horses that race in compliance with the Board's regulations. To not penalize the owners of those horses, the October 1, 2008 date was set to grandfather in any heel nerved horses currently racing in California. The October 1, 2008 date will also give the Board sufficient time to inform horsemen of the new regulation.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.
Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1850 will not have a sig-

nificant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1850 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1850 does not affect small businesses because horse racing is not a small business under Government Code section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: harolda@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Jacqueline Wagner, Manager
Policy and Regulation Unit
Telephone: (916) 263-6041

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 4. CALIFORNIA HORSE RACING BOARD

TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS NOTICE OF PROPOSAL TO AMEND RULE 1481. OCCUPATIONAL LICENSES AND FEES RULE 1486. TERM OF LICENSE AND ADD RULE 1504.5. PROVISIONAL EXERCISE RIDER

The California Horse Racing Board (Board) proposes to amend and add the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1481, Occupational Licenses and Fees, to add the license class of "provisional exercise rider." The Board proposes to amend Rule 1486, Term of License, to set the term of license of a provisional exercise rider at one year. The Board proposes to add Rule 1504.5, Provisional Exercise Rider, to provide the terms and conditions for license as a provisional exercise rider.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, July 17, 2008**, or as soon after that as business before the Board will permit, at the **Del Mar Surfside Raceplace, 2260 Jimmy Durante Boulevard, Del Mar, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on July 14, 2008**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
Fax: (916) 263-6022
E-Mail: harolda@chrb.ca.gov

AUTHORITY AND REFERENCE

Rule 1481: Authority cited: Sections 19440, 19510, 19520 and 19704, Business and Professions Code. Reference: Sections 19510, 19520 and 19704, Business and Professions Code.

Business and Professions Code sections 19440, 19510, 19520 and 19704 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19510, 19520 and 19704, Business and Professions Code.

Rule 1486: Authority cited: Sections 19440 and 19704, Business and Professions Code. Reference: Sections 19510, 19520, 19521 and 19704, Business and Professions Code.

Business and Professions Code sections 19440 and 19704 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19510, 19520, 19521 and 19704, Business and Professions Code.

Rule 1504.5: Authority cited: Sections 19420, 19440 and 19520, Business and Professions Code. Reference: Sections 19440, 19460 and 19520, Business and Professions Code.

Business and Professions Code sections 19420, 19440 and 19520 authorize the Board to adopt the proposed regulations, which would implement, interpret or make specific sections 19420, 19440 and 19520, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 provides that jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held and or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. Business and Professions Code section 19440 states the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to licensing of each racing association and all persons, other than the public at large, who participate in a horse racing meeting with pari-mutuel wa-

gering. Business and Professions Code section 19460 provides that all licenses granted under this Chapter shall contain such conditions as are deemed necessary or desirable by the Board for the purposes of this chapter. Business and Professions Code section 19510 states no person required to be licensed pursuant to this article may participate in any capacity in any horse race meeting without a valid and unrevoked license. Business and Professions Code section 19520 provides that every person required to be licensed under Article 4 (commencing with section 19480) who participates in, or has anything to do with, the racing of horses, shall be licensed by the Board pursuant to rules and regulations that the Board may adopt, and upon the payment of a license fee fixed and determined by the Board. Business and Professions Code section 19521 states an original license issued pursuant to this article shall be issued for a period of the calendar year in which it is issued, and shall be renewable for a period, not to exceed three years, which the Board may, by regulation, establish. The Board may establish a license fee schedule consistent with the different period for which the license may be granted. The license shall be valid at all horse racing meetings in this state during the period for which it is issued, unless it is suspended or revoked prior to the expiration of the period. Business and Professions Code section 19704 provides that the Board shall issue a license for owners, trainers, jockeys, and other participants in mule racing. The license shall be limited to mule races only.

The Board proposes to amend Rule 1481 to add the license classification of provisional exercise rider to subsection 1481(c). A provisional exercise rider is an individual who has not previously been licensed as an exercise rider in California or another racing jurisdiction. The provisional exercise rider license allows an inexperienced rider to be on the track under specific circumstances, and is a precursor to the exercise rider license. It is necessary to amend Rule 1481 so individuals who wish to obtain a provisional exercise rider license will know how much a new or a renewal license will cost. The fee for an original provisional exercise rider is \$35 and an annual renewal of the license would cost \$20. These fees are consistent with existing backstretch occupational licenses that are listed under subsection 1481(c) and that have a term of one year.

The proposal to amend Rule 1486 would add provisional exercise rider as a class of license whose term is one year. As with the other classes of occupational licenses under Rule 1486, the initial provisional exercise rider license would expire on the last day of the year in which it is issued; this conforms to Business and Professions Code section 19521. The license expiration date is automatically extended to the last day of the birth month of the licensee in the following year. This allows each

subsequent one-year license renewal of such licenses to expire on the last day of the birth month of the licensee. All CHRB one-year licenses follow this pattern, as it spreads the one-year expiration dates throughout a calendar year, which avoids an end-of-the-year backlog of license renewals.

The Board proposes to add Rule 1504.5, Provisional Exercise Rider. The industry proposed the creation of a provisional exercise rider license to provide a training period to allow aspiring exercise riders to gain experience. The industry contends California is losing experienced and professional exercise riders. This is occurring because there is no venue where an inexperienced rider can learn to ride a thoroughbred racehorse in a setting that duplicates the conditions at California racetracks. If an inexperienced applicant is able to get a license as exercise rider, he is often thrown into the system without supervision and can become a danger on the racetrack. Rule 1504.5 provides that no person may be licensed as an exercise rider who has not previously held a provisional exercise rider license, or unless such person has held an exercise rider license in good standing in this state, or who was or is currently licensed in as an exercise rider in good standing in another racing jurisdiction. This ensures that only experienced exercise riders receive such licenses and does not penalize experienced out-of-state applicants, or persons who may wish to renew a lapsed California license. All other persons must obtain a provisional exercise rider license.

Subsection 1504.5(a) states that an applicant for license as provisional exercise rider must submit a notarized Provisional Exercise Rider Agreement, CHRB-213 (New 05/08), as proof that he or she is employed by a CHRB licensed trainer. The CHRB-213 states the conditions of employment of the provisional exercise rider, and must be signed by the trainer and license applicant and acknowledged by a notary. The notary acknowledgement is not necessary if the document is signed before an employee of the CHRB. The notary acknowledgement or the CHRB employee witness ensures the document is valid, and is consistent with current practice.

Working for a single trainer provides the structure around which the provisional exercise rider will gain experience on the track. Such employment will ensure the provisional exercise rider is covered by worker's compensation insurance, as trainers are required to maintain worker's compensation insurance under Board Rule 1501, Worker's Compensation Insurance Required. Employment by a trainer is also meant to prevent provisional exercise riders from seeking to exercise horses on a freelance basis, as provisional exercise riders may ride only horses trained by their employer. A benefit of this provision is that the trainer/employer will have a better understanding of the temperament of the

horse his employee can handle on the track. A trainer who hires an unfamiliar exercise rider on a freelance basis may not provide a horse the rider can handle. This is especially true if the rider is inexperienced.

Subsection 1504.5(b)(1) states the provisional exercise rider may not enter the track without the permission of the outrider, and must be accompanied on the track by his mounted trainer/employer, or an assistant trainer, unless the outrider states otherwise. The outrider is an official who is present when horses are exercised on the track. The outrider monitors the activity on the track to ensure the safety of the horse and rider. Subsection 1504.5(b)(1) allows the outrider to determine if track conditions are such that it is safe for an inexperienced provisional exercise rider to be on the track. Requiring the trainer or assistant trainer to accompany the provisional exercise rider on the track allows the trainer to monitor the provisional exercise rider's performance and to give guidance where needed. The outrider may allow a provisional exercise rider on the track without the trainer or assistant trainer if he feels the provisional exercise rider has the necessary skills.

Subsection 1504.5(b)(2) states that while on the track the provisional exercise rider shall wear a helmet cover and vest cover of a distinctive color as determined by the outrider. Helmet and vest covers are inexpensive, and the distinctive color will allow the outrider to easily identify a provisional exercise rider. Such helmet and vest covers are readily available from tack and saddle shops at moderate prices.

Subsection 1504.5(c) states a provisional exercise rider may apply for license as exercise rider 60 days after the date of issue of his or her provisional exercise rider license. Although the term of a provisional exercise rider is one year, there may be individuals who demonstrate before the end of the term of the license that they have the ability to work as an exercise rider. Subsection 1504.5(c) provides a reasonable period of time for the trainer/employer and the outrider to observe the provisional exercise rider's skills and to make a determination regarding his or her ability to work an exercise rider. Subsection 1504.5(c)(1) states that at the time of application for license as exercise rider, the provisional exercise rider shall submit a recommendation card form California Horse Racing Board CHRB-59, which is incorporated by reference in the regulation. The outrider and the stewards must sign the CHRB-59. The recommendation card serves as proof that the outrider has determined the provisional exercise rider has the horsemanship skills and knowledge of track rules to work as an exercise rider, and that the outrider's determination is endorsed by the stewards.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1481 and 1486, and addition of Rule 1504.5 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1481 and Rule 1486, and addition of Rule 1504.5 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1481 and Rule 1486, and addition of Rule 1504.5 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the

regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
Fax: (916) 263-6022
E-mail: harolda@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden, Regulation Analyst
Telephone: (916) 263-6033
E-mail: andreaog@chrb.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed texts, the modified texts, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulations in their current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 5. EDUCATION AUDIT APPEALS PANEL

Notice of Proposed Rulemaking

Audits of K-12 Local Education Agencies Fiscal Year 2008-09

The Education Audit Appeals Panel (EAAP) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

Public Hearing:

A public hearing regarding this proposal is not currently scheduled. Not later than 15 days prior to the close of the written comment period, any interested person, or his or her duly authorized representative, may make a written request for a public hearing pursuant to Government Code section 11346.8, and a public hearing will be held. Requests for a public hearing should be addressed to the Regulations Coordinator.

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Coordinator. The written comment period closes at **5:00 p.m. on July 14, 2008**. EAAP will consider only written comments received by the Regulations Coordinator by that time. Written comments for EAAP's consideration should be directed to:

Chris Pentoney, Regulations Coordinator
Education Audit Appeals Panel
770 L Street, Suite 1100
Sacramento, CA 95814
Fax: (916) 445-7626
e-mail: cpentoney@eaap.ca.gov

Authority and Reference: Authority cited: Section 14502.1, Education Code. Reference: Sections 8482.3, 14501, 14502.1, 14503, and 41020 of the Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The regulations in Title 5 of the California Code of Regulations, Division 1.5, Chapter 3, constitute the audit guide required by Education Code sections 14503 and 41020. The audit guide provides guidance, through definitions of terms and specification of procedures, to auditors in the conduct of statutorily required financial and compliance audits of local education agencies. EAAP proposes amendments and additions to these regulations for the 2008–09 fiscal year that derive from proposed content submitted to EAAP by the Controller pursuant to Education Code Section 14502.1. The affected regulation sections are 19816, 19816.1, 19828.2, 19837.1, and 19846, and new sections 19828.3, and 19837.2.

Article 2, Audit Reports, includes definitions of terms in Section 19816, which is amended to specify the numbers of audit procedures for fiscal year 2008–09. Section 19816.1 specifies which sections of the audit guide are applicable to each audit year; it is amended to list those sections applicable to audits of fiscal year 2008–09, omitting the procedures related to kindergarten continuance, state school construction funds, excess sick leave, notification of right to elect CalSTRS membership, Proposition 20 lottery funds, state lottery funds, and California School Age Families Education.

Article 3, State Compliance Requirements: Local Education Agencies Other Than Charter Schools, Article 3.1, State Compliance Requirements: School Districts and Charter Schools, and Article 4, State Compliance Procedures: Charter Schools list the particular state-funded education programs that are required to be audited and set forth procedures that direct auditors to relevant documents and reports and guide auditors in steps to determine whether an auditee was in compliance with the relevant statutory and regulatory requirements during the period audited. No amendments are proposed for Article 4.

In Article 3, two existing sections are being amended to modify an introductory sentence limiting their applicability to one audit year, and two successor sections are being added to incorporate changes applicable to audits of fiscal year 2008–09 and thereafter:

- Section 19828.2, Instructional Materials, is limited to audits of fiscal year 2007–08. In addition, nonsubstantive changes are being made for style and clarity in the audit guide. Successor Section 19828.3 will apply to audits of fiscal year 2008–09 and each fiscal year thereafter. Subparagraph (e)(5) will direct auditors to scrutinize more closely the certification made pursuant to Education Code Section 60422.

- Section 19837.1, School Accountability Report Card, is limited to audits of fiscal year 2007–08. Successor Section 19837.2, for fiscal year 2008–09 and future years, conforms the cross references in subparagraph (c) to new Section 19828.3.

In Article 3.1, Section 19846, After School Education and Safety Program, nonsubstantive changes are made to subparagraphs (a)(2), (a)(5), and (b)(2) for style and clarity in the audit guide.

Disclosures Regarding the Proposed Action:

- Mandate on local agencies and school districts: None
- Cost or savings to any state agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None
- Other non-discretionary cost or savings imposed upon local educational agencies: None
- Cost or savings in federal funding to the state: None
- Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
- Cost impact on a representative private person or business: The EAAP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not:
 - (1) create or eliminate jobs within California;
 - (2) create new businesses or eliminate existing businesses within California; or
 - (3) affect the expansion of businesses currently doing business within California.
- Significant affect on housing costs: EAAP has made an initial determination that the proposed regulatory action would not affect housing costs.
- Effect on small businesses: The proposed regulations will have no effect on small businesses because they do not materially alter the requirements for LEA audits.

Consideration of Alternatives:

In accordance with Government Code Section 11346.5(a)(13), EAAP must determine that no reasonable alternative considered by EAAP or that has otherwise been identified and brought to the attention of EAAP would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

EAAP invites interested persons to present statements or arguments regarding alternatives to the proposed regulations during the written comment period.

Contact Persons:

Inquiries concerning the substance of the proposed action, requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, and other technical information upon which the rulemaking is based, and questions on the proposed administrative action may be directed to Chris Pentoney, Regulations Coordinator, at (916) 445-7745 or by e-mail: cpentoney@eaap.ca.gov. The back-up contact person for general inquiries is Carolyn Pirillo, at (916) 445-7745.

Availability of Initial Statement of Reasons and Text of Proposed Regulations:

The Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Coordinator at the above address.

Availability of Changed or Modified Text:

Following the comment period, and a hearing, if requested, and consideration of all timely and relevant comments received, EAAP may adopt the proposed regulations substantially as described in this notice. If EAAP makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before EAAP adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Coordinator at the address stated above. The Regulations Coordinator will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Availability of the Final Statement of Reasons:

Upon completion of the Final Statement of Reasons, a copy may be obtained by contacting the Regulations Coordinator at the above address.

Availability of Documents on the Internet:

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, text of the regulations in underline and strikeout, and Final Statement of Reasons will be accessible, through the Education Audit Appeals Panel website: www.eaap.ca.gov.

TITLE 8. DIVISION OF WORKERS' COMPENSATION

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

NOTICE OF PROPOSED RULEMAKING

**Subject Matter of Regulations:
Disability Evaluation Unit Regulations**

**TITLE 8, CALIFORNIA CODE
OF REGULATIONS
Sections 10150 through 10168**

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 133, 139.5, 4061, 4660, 5307.3, and 5307.4 proposes to adopt, amend and repeal regulations within Article 9, Subchapter 1.6, Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10150, relating to the Disability Evaluation Unit.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt, amend and repeal regulations within Article 9, Subchapter 1.6, Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10150, relating to the Disability Evaluation Unit.

| | |
|-------------------|--|
| Amended §10150 | Authority |
| Proposed §10151 | Filing Requirements. |
| Proposed §10150.1 | Signature disputes and the signatures of consultants |
| Proposed §10150.2 | Technical unavailability of EAMS |
| Proposed §10150.3 | Disability Evaluation Unit File Retention. |
| Proposed §10150.4 | Misfiled or misdirected documents |
| Amended §10160 | Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee. |
| Amended §10160.1 | Summary Rating Determinations, Report of |

| | |
|-------------------|--|
| | Primary Treating Physician for Unrepresented Employee. |
| Amended §10160.5 | Summary Rating Determinations, Represented Employees |
| Amended §10161 | Forms. |
| Amended §10161.1 | Reproduction of Forms. |
| Amended §10162 | Summary Rating Determinations, Apportionment. |
| Amended §10164 | Summary Rating Determinations, Reconsideration If Employee Is Unrepresented. |
| Amended §10165 | Service of Summary Rating Determination and Notice of Options Following Permanent Disability Rating. |
| Amended §10166 | Consultative Ratings Determinations. |
| Proposed §10166.1 | Form (Request for Consultative Rating) |
| Amended §10167 | Informal Ratings. |
| Repealed §10168 | Records, Destruction of. |

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

Date: Monday, July 14, 2008

Time: 10:00 a.m. to 5:00 p.m. or conclusion of business

**Place: Ronald Reagan State Building, Auditorium
300 South Spring Street
Los Angeles, CA 90013**

Date: Tuesday, July 15, 2008

Time: 10:00 a.m. to 5:00 p.m. or conclusion of business

**Place: Elihu Harris State Building, Auditorium
1515 Clay Street
Oakland, CA 94612**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication

for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on July 15, 2008**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m. on July 15, 2008**.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code sections 133, 139.5, 4061, 4660, 5307.3, and 5307.4.

Reference is to Labor Code sections 123.6, 123.7, 124, 139.5, 4061, 4062, 4062.01, 4062.1, 4062.2, 4062.5, 4064, 4067, 4660, 4662, 4663, 4664, 5275, 5451, 5502, 5701, and 5703.5.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

This rulemaking amends the Disability Evaluation Unit (DEU) regulations to allow required documents to be filed with the Electronic Adjudication Management System (EAMS). In fiscal year 2004 to 2005, SB 1113 (chapter 208) authorized funds to establish EAMS within DWC. EAMS is a computer based document filing and management system that will simplify and improve the DWC case management process to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users, and transform paper files into secure electronic files. EAMS will replace the current workers' compensation court technology and supporting infrastructure, thereby reducing the need for physical storage space at local DWC offices and the State Records Center. Regulations that implement EAMS for claims adjudication will be filed concurrently with the Office of Administrative Law.

Utilizing the applicable Permanent Disability Rating Schedule adopted by the Administrative Director under Labor Code section 4660, DEU calculates permanent disability ratings for injured workers based on an evaluating physician's medical descriptions of physical and mental impairment. See Labor Code section 4061(e). The permanent disability ratings issued by DEU are used by workers' compensation administrative law judges, injured workers, and insurance claims administrators to determine the appropriate permanent disability indemnity benefit under Labor Code section 4658. DEU prepares four types of ratings: (1) formal, done at the request of a workers' compensation administrative law judge in a litigated case; (2) summary, done on a non-litigated case for an unrepresented injured worker; (3) consultative, generally done on litigated cases at the request of an attorney or DWC information and assistance officer; and (4) informal, done on non-litigated cases at the request of a claims administrator or injured worker. California Code of Regulations, title 8, section 10150 et seq. A summary rating issued by DEU is subject to review and reconsideration by the Administrative Director. Labor Code section 4061(g).

These proposed regulations implement, interpret, and make specific these sections of the Labor Code and EAMS as follows:

Amended §10150. Authority.

The changes to this section are non-substantive only: changing the case of the term "administrative director."

Proposed §10151. Filing Requirements.

This proposed section defines "EAMS," requires all forms, documents or correspondence submitted to the Disability Evaluation Unit to be signed by the filing party and stored in EAMS, and to contain a case number assigned by the Division of Workers' Compensation.

Except for documents or forms which open a Disability Evaluation Unit file, all documents and forms shall contain a case number assigned by the Division of Workers' Compensation. The case number shall be preceded by the prefix "DEU". Case opening document shall be assigned a case number by the Division of Workers' Compensation after filing. Documents or forms filed without a case number will be return to the sender with instructions for proper filing

All documents presented for filing shall conform to the requirements of section 10232 of title 8 of the California Code of Regulations. Section 10232 is proposed in the Court Administrator's regulations.

The Division of Workers' Compensation shall scan all documents and forms filed into the EAMS case file and then the paper document or form will be destroyed. A properly filed form or document shall be deemed a legal filing for all purposes.

The service of all documents and forms shall conform to the methods of service described in section of 10218 of title 8 of the California Code of Regulations. Section 10218 is proposed in the Court Administrator's regulations.

Proposed §10150.1. Signature disputes and the signatures of consultants

This proposed section provides that anyone who disputes the authenticity of any signature must file an objection to the pleading or other paper within ten (10) days of the filing of that document. The objection shall contain a complete explanation of the basis for the objection.

It also provides that the filing of a document, signed with a "/s/ name" or an electronic image of the signature filed with the login and password of the Division of Workers' Compensation consultant assigned to the case shall constitute an original signature for all purposes.

Proposed §10150.2. Technical unavailability of EAMS

This proposed section provides that technical problems with filing documents shall be governed by section 10225 of title 8 of the California Code of Regulations, which is a proposed section in the court administrator regulations.

Proposed §10150.3. Disability Evaluation Unit File Retention.

This proposed section provides that following a period of fifty (50) years after the filing of a document used to open a case or file, the Division of Workers' Compensation may destroy the electronic and/or paper file in each case maintained by the Disability Evaluation Unit.

This section also provides that the Division of Workers' Compensation, at any time, may convert a paper file to an electronic file. If a paper case file has been converted to electronic form, the paper case file may be destroyed. The Division of Workers' Compensation shall inform the parties when a paper file is converted.

Proposed §10150.4. Misfiled or misdirected documents

This proposed section provides that a request to move or substitute a corrected document shall be made in conformity with section 10223 of title 8 of the California Code of Regulations, except that a request to substitute shall be made in lieu of a petition to substitute as allowed under section 10223(b). The authority to approve moving a document from one file to another file shall reside with the Manager of the Disability Evaluation Unit or his or her designee. Section 10223 is a proposed section in the court administrator regulations.

Amended §10160. Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee.

This section is amended. In subdivisions (a)(1) and (2) reference to "DEU Form 101" is changed to "DWC AD Form 101(DEU)."

In subdivision (b), reference to "(DEU Form 100)" is deleted and the case is changed for the term "administrative director."

In subdivision (c), reference to "(DEU Form 101)" is deleted (c)

In subdivision (d) reference to "DEU Form 101" is changed to "DWC AD Form 101(DEU)."

In subdivision (d)(1), reference to "(DEU Form 101)" is deleted (c). In subdivision (d)(2), reference to "(DEU Form 100)" is deleted.

In subdivision (d)(3), reference to "IMC Form 1002" is changed to "QME Form 111."

Subdivision (d)(4) provides a document cover sheet and separator sheet pursuant to section 10232(b) of title 8 of the California Code of Regulations, which shall only be served on the Disability Evaluation Unit. Section 10232 is a proposed section in the court administrator regulations.

Subdivision (e) is amended as follows: "(e) No request for a summary rating determination will shall be considered to be received until the Employee's Disability Questionnaire DEU Form 100, the Request for Sum-

mary Rating Determination of Qualified Medical Evaluator's Report DEU Form 101, and the comprehensive medical evaluation have been received by the office of the Disability Evaluation Unit having jurisdiction over the employee's area of residence. In the event an employee does not have a completed Employee's Disability Questionnaire (DEU Form 100) at the time of his or her appointment with a Qualified Medical Evaluator, the medical evaluator shall provide this form to the employee for completion prior to the evaluation. Any requests received on or after April 1, 1994 without all the required documents will be returned to the sender."

Amended §10160.1. Summary Rating Determinations, Report of Primary Treating Physician for Unrepresented Employee.

This section is amended. Letters are added to designate the subdivisions.

Subdivision (b) is amended as follows: "(b) The request may be made by completing a Request for Summary Rating Determination of Primary Treating Physician's Report (DWC AD DEU Form 102 (DEU) 2) and sending filing the request to the Disability Evaluation Unit together with a copy of the primary treating physician's report, if the report has not already been filed in EAMS."

Subdivision (c) is amended as follows: "(c) A filed ~~copy~~ of the request form and a copy of the primary treating physician's report ~~must~~ shall be served ~~concurrently~~ immediately after filing on the non-requesting party, ~~including~~ with a proof of service on the non-requesting party."

Amended §10160.5. Summary Rating Determinations, Represented Employees.

This section is amended. In subdivisions (a)(1) and (b) reference to "DEU Form 101" is changed to "DWC AD Form 101(DEU)."

In subdivision (b), the case is changed for the term "administrative director" and reference to "(DEU Form 101)" is deleted.

Subdivision (c) is amended as follows: "(c) Notwithstanding the provisions of subdivision (b), a party may request a summary rating determination following receipt of a medical report prepared by a Qualified Medical Evaluator or Agreed Medical Evaluator on a represented case. The party shall ~~send file~~ the Request for Summary Rating Determination (DEU Form 101) and the medical report ~~to~~ with the DEU office designated by the ~~Administrative Director~~ and shall ~~simultaneously~~ immediately serve a filed copy of the Summary Rating Determination the other party."

Amended §10161. Forms.

This section, which lists the names of the DEU forms, is amended as follows:

“(a) Employee’s Disability Questionnaire (DWC AD DEU; Form 100 (DEU))

(b) Request for Summary Determination of Qualified Medical Evaluator’s Report (DWC AD DEU Form 101 (DEU))

(c) Request for Summary Determination of Primary Treating Physician’s Report (DWC AD DEU Form 102 (DEU)).”

The forms themselves are changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Amended §10161.1. Reproduction of Forms.

This section is amended to delete reference to “(DEU Form 101),” “(DEU Form 100),” and “(DEU Form 102).” The word “content” is replaced with the phrase “printed layout of the form.”

Amended §10162. Summary Rating Determinations, Apportionment.

This section is amended. Letters are added to designate the subdivisions.

Throughout the section, the term “Workers’ Compensation Judge” is changed to “workers’ compensation administrative law judge.” The term “Presiding Workers’ Compensation Judge” is changed to “presiding workers’ compensation administrative law judge.” The term “Appeals Board” is changed to “appeals board.”

In subdivisions (b) and (c), the word “will” is changed to “shall.”

Amended §10164. Summary Rating Determinations, Reconsideration If Employee Is Unrepresented.

Throughout this section, “Administrative Director” is changed to “administrative director.” In subdivision (a), the word “must” is replaced with “shall” and the words “shall be accompanied by a copy of the summary rating, a copy of the comprehensive medical evaluation,” are deleted. The word “a” is added. In subdivision (a)(4), the term “Industrial Medical Council” is deleted and replace with “administrative director.”

In subdivision (c), the term “Industrial Medical Council” is deleted and replace with “Medical Unit.”

Amended §10165. Service of Summary Rating Determination and Notice of Options Following Permanent Disability Rating.

This section is amended as follows:

“Within the time specified in Labor Code section 4061(h e), the Office of Benefit Determination Disability Evaluation Unit shall serve the permanent disability rating determination and the Notice of Options Following Permanent Disability Rating on the employee and employer by their the method of service described in

section of 10218 of title 8 of the California Code of Regulation, first-class mail. At the same time, the employee shall also be served with the Notice of Options Following Permanent Disability Rating.”

Amended §10166. Consultative Ratings Determinations.

In subdivision (a), “Workers’ Compensation Appeals Board” is changed to “appeals board.” The term “Workers’ Compensation Judge” is changed to “workers’ compensation administrative law judge.” The case is changed for the terms: “settlement conference referees,” “arbitrators,” “workers’ compensation judges pro-tempore” and “information & assistance officers.”

In subdivision (b), the case is changed for the term “compromise and release.” The following sentence is deleted: “These rating determinations are the ‘informal ratings’ referred to in subsection (k) of section 10301 of the Workers’ Compensation Appeals Board Rules of Practice and Procedure.”

In subdivision (c), the case is changed for the term “compromise and release.” Further, the repeated phrase “self-insurer seeks a consultative rating determination for the purpose of terminating its” is deleted.

In subdivision (e), the case is changed for the terms: “appeals board,” “settlement conference referees,” “arbitrators,” “workers’ compensation judges pro-tempore” and “information & assistance officers.” The term “Workers’ Compensation Judge” is changed to “workers’ compensation administrative law judge.”

Proposed §10166.1. Form (Request for Consultative Rating).

This proposed section is the form to be used for a request for consultative rating.

Amended §10167. Informal Ratings.

This section is amended. Letters are added to designate the subdivisions.

In subdivisions (a) and (b), the case is changed for the terms “administrative director” and “appeals board.”

The following sentence is deleted: “The Disability Evaluation Unit may request the employee to submit to a medical examination as provided for under Labor Code Sections 4050, 4600, and 5703.5.”

Repealed §10168. Records, Destruction of. Records Retention

This section is repealed. Record retention is now addressed in proposed section 10150.3.

DISCLOSURES REGARDING THE
PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private persons or business: The proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations will not affect small businesses. The businesses that are subject to these regulations are insurers, self-insured employers (who must by regulation have substantial net worth and income) and third party administrators, all of whom do not qualify as "small business."

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: The proposed regulations will not increase costs on State agencies.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See "Local Mandate" section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See "Local Mandate" section above.)

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the

Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code § 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment through the Division's Internet message board (the DWC Forums).

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations, pre-rulemaking comments, and the Form 399. Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations — Rulemaking" link and scroll down the list of rulemaking proceedings to find the current "Disability Evaluation Unit Regulations" rulemaking link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rule-making notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142
E-Mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

BACKUP CONTACT/PERSON CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact persons:

Destie Overpeck (doverpeck@dir.ca.gov)
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the backup contact person is (510) 286-7100.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: www.dir.ca.gov

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, commencing with section 10150.

TITLE 8. DIVISION OF WORKERS' COMPENSATION

STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS Division of Workers' Compensation

NOTICE OF PROPOSED RULEMAKING

Subject Matter of Regulations: Retraining and Return to Work Regulations

TITLE 8, CALIFORNIA CODE OF REGULATIONS Sections 10116 through 10133.58

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 133, 138.4, 139.48, 139.5, 4658.5, 4658.6, and 5307.3, proposes to adopt regulations within Articles 6, 6.5, 7, and 7.5, Subchapter 1 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10116, relating to Retraining and Return to Work.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt regulations within Articles 6, 6.5, 7, and 7.5, Subchapter 1 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10116, relating to Retraining and Return to Work.

Article 6. Retraining and Return to Work Definitions and General Provisions

| | |
|-------------------|--|
| Proposed §10116 | Filing and Reporting Requirements |
| Proposed §10116.2 | Incomplete Filings |
| Amended §10116.3 | Reproduction of Forms, Notice |
| Proposed §10116.4 | Technical unavailability of EAMS |
| Proposed §10116.5 | Retraining and Return to Work File Retention |

- Proposed §10116.6 Misfiled or misdirected documents
- Proposed §10116.7 Jurisdiction where the issue of injury has not been resolved
- Amended §10116.8 Definitions for Article 6.5 and 7.5

Article 6.5. Return to Work

- Amended §10117 Offer of Work; Adjustment of Permanent Disability Payments
- Amended §10118 Form [DWC AD 10118 Notice of Offer of Work]
- Amended §10119 Return to Work Program
- Amended §10120 Form [DWC AD 10120 Request for Reimbursement of Accommodation Expenses]

Article 7.0. Vocational Rehabilitation

- Amended §10123 Vocational Rehabilitation Reporting Requirements
- Amended §10127 Dispute Resolution
- Amended §10127.1 Conference
- Amended §10128 Request for Order of Rehabilitation Services
- Amended §10133.13 Form RU-102 "Vocational Rehabilitation Plan" and Form Filing Instructions
- Amended §10133.14 Form RU-103 "Request for Dispute Resolution" and Form Filing Instructions
- Amended §10133.16 Form RU-105 "Notice of Termination of Vocational Rehabilitation Services."
- Amended §10133.22 Form RU-122 "Settlement of Prospective Vocational Rehabilitation Services" and Form Filing Instructions.
- Repealed §10133.3 Rehabilitation File Retention

Article 7.5. Supplemental Job Displacement Benefit

- Repealed §10133.50 Definitions
- Amended §10133.53 Form DWC-AD 10133.53 "Notice of Offer of Modified or Alternative Work."
- Amended §10133.54 Dispute Resolution
- Amended §10133.55 Form DWC-AD 10133.55 "Request for Dispute Resolution Before the Administrative Director."

Amended §10133.56 Requirement to Issue Supplemental Job Displacement Non Transferable Training Voucher.

Amended §10133.57 Form DWC-AD 10133.57 "Supplemental Job Displacement Nontransferable Training Voucher Form."

Amended §10133.58 State Approved or Accredited Schools

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

Date: Monday, July 14, 2008

Time: 10:00 a.m. to 5:00 p.m. or conclusion of business

**Place: Ronald Reagan State Building, Auditorium
300 South Spring Street
Los Angeles, CA 90013**

Date: Tuesday, July 15, 2008

Time: 10:00 a.m. to 5:00 p.m. or conclusion of business

**Place: Elihu Harris State Building, Auditorium
1515 Clay Street
Oakland, CA 94612**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on July 15, 2008**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m. on July 15, 2008**.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code sections 133, 138.4, 139.48, 139.5, 4658.5, 4658.6, and 5307.3.

Reference is to Labor Code sections 62.5, 124, 139.48, 139.5, 4636, 4637, 4638, 4645, 4658.1, 4658.5, 4658.6, and 5814.6; and *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

This rulemaking amends the Retraining and Return to Work Regulations to allow required documents to be filed with Electronic Adjudication Management System (EAMS). It also reorganizes the numbering of the sections so that the sections are consecutive and the same definitions can apply to both the return to work and the supplemental job displacement sections.

In fiscal year 2004 to 2005, the Senate Bill 1113 (chapter 208) authorized funds for EAMS. EAMS is a computer based system that will simplify and improve the DWC case management process to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users, and transform paper files into secure electronic files, thereby reducing the need for physical storage space at local DWC offices and the State Records Center. EAMS will replace the current workers' compensation court technology and supporting infrastructure. The Court Administrator's regulations that implement EAMS for claims adjudication will be filed concurrently with the Office of Administrative Law.

This set of regulations amends the vocational rehabilitation, supplemental job displacement benefit, and return to work regulations. As part of Assembly Bill 227, the Legislature repealed Article 2.6, Labor Code sections 4635, et. seq., and Labor Code section 139.5. These statutes comprised the vocational rehabilitation program. As part of Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004), Labor Code section 139.5 was reinstated with the addition of subdivisions (k) and (l). Subdivision (k) limits the application of the statute to injuries occurring before January 1, 2004. Subdivision (l) provides that the statute shall remain in effect only until January 1, 2009, and as of that date is repealed, unless it is repealed or extended before this date.

Additionally, the Workers' Compensation Appeals Board has held the repealed vocational rehabilitation statutes remain applicable to prior injuries. "[E]ven though these sections were repealed in 2003 and not re-enacted in 2004, they still have a shadowy existence for injuries prior to January 1, 2004. Like ghosts 'doomed for a certain term to walk to the night' (*Hamlet* 1, v), these statutes have no material existence but linger until their work is done." (*Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, significant WCAB panel decision.) Additionally, the Rehabilitation Unit continues to exist to oversee vocational rehabilitation issues.

In lieu of the former vocational rehabilitation system, AB 227 added Labor Code section 4658.5, which provides a supplemental job displacement benefit. This statutory benefit enables some injured workers who are precluded from returning to work to obtain vouchers to reimburse them for the costs of retraining or schooling. This benefit provides a maximum benefit of \$10,000 in the form of nonrefundable vouchers to be applied toward school or a training program, as opposed to the \$16,000 total allowable cost under the former program. Furthermore, unlike the former rehabilitation system, the appointment of a qualified rehabilitation representative and the establishment of a vocational rehabilita-

tion plan are not required, and there is no provision for a weekly maintenance allowance provided to the injured worker while he or she is participating in a rehabilitation program.

SB 899 also added subdivision (d) to Labor Code section 4658, which increases the number of weeks of permanent disability indemnity for severe disabilities (70% and above). This subdivision also includes: (1) an incentive, by way of a permanent partial disability benefit payment reduction, for employers to offer to returning injured employees to regular, modified, or alternative work, and (2) a disincentive, by way of a permanent partial disability benefit payment increase, for employers who fail to provide an injured employee with a return to work offer. Subdivision (d) is mandated to apply to injuries occurring on or after the effective date of the revised permanent disability schedule that was adopted by the Administrative Director pursuant to Labor Code section 4660 on January 1, 2005. AB 899 also added 4658.1, which provides definitions of terms used in Article 3, including Labor Code section 4658.

SB 899 further included Labor Code section 139.48, which provides for the Return to Work Program, reimbursement, requirements for return to work of injured employees, regulatory authority, and funding source. Labor Code section 4658 provides for permanent disability, computation, benefits schedules, and increase or decrease in disability payments depending on offer or termination of regular, modified, or alternative work. Labor Code section 4658.1 defines the meaning of regular work, modified work, and alternative work.

Labor Code section 139.48(a)(1) provides that the Administrative Director shall establish the Return-to-Work Program in order to promote the early and sustained return to work of the employee following a work-related injury or illness.

Labor Code section 139.48(2)(b) provides that upon submission by eligible employers of documentation in accordance with regulations adopted pursuant to subdivision (h), the Administrative Director shall pay the workplace modification expense reimbursement allowed under this section.

These proposed amended regulations implement, interpret, and make specific these sections of the Labor Code and EAMS as follows:

Proposed Section §10116. Filing and Reporting Requirements

This proposed section defines “EAMS,” requires all forms, documents or correspondence submitted to the Retraining and Return to Work Unit to be signed by the filing party and stored in EAMS, and to contain a case number assigned by the Division of Workers’ Compensation.

Case opening documents shall be assigned a case number by the Division of Workers’ Compensation after filing; where no case number has been previously assigned for the date of injury alleged by the injured worker. The case number shall be preceded by the prefix “VOC” for cases governed by Article 7 of these rules and “RSU” for cases governed by Article 6.5 and 7.5 of these rules. If a case number has been previously assigned by the Division of Workers’ Compensation, the prefix “VOC” or “RSU” shall precede the assigned case number on a form or document filed with the Retraining and Return to Work Unit. Documents or forms filed in existing cases without a case number will be returned to the sender with instructions for proper filing.

All documents presented for filing shall conform to the requirements of section 10232 of title 8 of the California Code of Regulations. Section 10232 is proposed in the Court Administrator’s regulations.

The Division of Workers’ Compensation shall scan all documents and forms filed into the EAMS case file and then the paper document or form will be destroyed. A properly filed form or document shall be deemed a legal filing for all purposes.

The service of all documents and forms shall conform to the methods of service described in section 10218 of title 8 of the California Code of Regulations. Section 10218 is proposed in the Court Administrator’s regulations.

All required notices, any documents or forms shall be sent to the employee and his or her attorney, if any, on a timely basis by the claims administrator in the form and manner prescribed in section 10218 of title 8 of the California Code of Regulations. Failure to provide notices timely shall subject the insurer, third party administrator or self-insured employer to administrative or civil penalties. The notices are timely when sent according to the requirements of section 9813.

Proposed §10116.2. Incomplete filings.

This section provides that a form filed without the attachments or enclosures required by these rules is deemed incomplete and shall not be deemed filed for any purpose. All incomplete requests will be date stamped by the Division of Workers’ Compensation.

The Retraining and Return to Work Unit shall notify the filer and the other parties when a form or document is not deemed filed.

The forms, including filing instructions and venue lists, shall be provided upon request by the Retraining and Return to Work Unit and are posted on the Division of Workers’ Compensation’s website. The address and website are set forth in the regulation.

Amended §10116.3. Reproduction of Forms, Notices.

This section amends former section 10123.1. It no longer allows any form to be modified.

Proposed §10116.4. Technical unavailability of EAMS

This proposed section provides that technical problems with filing documents shall be governed by section 10225 of title 8 of the California Code of Regulations. Section 10225 is a proposed section in the Court Administrator's regulations.

Proposed §10116.5. Retraining and Return to Work File Retention.

This proposed section provides that following a period of fifty (50) years after the filing of a document used to open a case or file, the Division of Workers' Compensation may destroy the electronic and/or paper file in each case maintained by the Retraining and Return to Work Unit.

The Division of Workers' Compensation, at any time, may convert a paper file to an electronic file. If a paper case file has been converted to electronic form, the paper case file may be destroyed. The Division of Workers' Compensation shall inform the parties when a paper file is converted.

Proposed §10116.6. Misfiled or misdirected documents

This proposed section provides that a request to move, substitute or correct a document shall be made in conformity with section 10223 of title 8 of the California Code of Regulations, except that the authority to approve moving a document from one file to another file shall reside with the Manager of the Retraining and Return to Work Unit or his or her designee. Section 10223 is a proposed section in the Court Administrator's regulations.

Proposed §10116.7. Jurisdiction where the issue of injury has not been resolved.

This proposed section provides that no forms, notices or reports shall be filed with the Retraining and Return to Work Unit until the claims administrator has accepted liability for the injury or there has been a finding of compensable injury by the appeals board.

In addition, any requests for provision of retraining or return to work services and for intervention/dispute resolution require confirmation by the employee or his/her representative that liability for the injury has been accepted.

Forms sent to the Retraining and Return to Work Unit when a good faith issue of injury exists or where there has been no confirmation of acceptance of injury shall be returned to the sender.

Amended §10116.8. Definitions for Article 6.5 and 7.5

This section amends former section 10001. It combines the definitions that were previously listed separately in section 10001 and 10133.50. It now provides definitions for Article 6.5 and 7.5 governing injuries occurring on or after January 1, 2004:

The definition for "Approved Training Facility" is the same as former section 10133.50(a)(2).

The definition for "Employer" is the same as former section 10133.50(a)(4).

The definition for "Essential Functions" is the same as former section 10133.50(a)(5).

The definition for "Insurer" is the same as former section 10133.50(a)(6).

The definition for "Nontransferable Training Voucher" is the same as former section 10133.50(a)(8).

The definition for "Notice" is the same as former section 10133.50(a)(9).

The definition for "Offer of Modified or Alternative Work" is the same as former section 10133.50(a)(10).

The definition for "Parties" is the same as former section 10133.50(a)(11).

The definition for "Permanent Partial Disability Award" is the same as former section 10133.50(a)(12).

The definition for "Supplemental Job Displacement Benefit" is the same as former section 10133.50(a)(14).

The definition for "Vocational & Return to Work Counselor (VRTWC)" is the same as former section 10133.50(a)(15).

The definition for "Work Restrictions" is the same as former section 10133.50(a)(16).

Amended §10117. Offer of Work; Adjustment of Permanent Disability Payments

This section amends former section 10002. Subdivision (b) (3) is amended to replace the former DWC AD form 10003 with the new number: 10118. The words: "and shall file the forms with the Retraining and Return to Work Unit immediately after serving the form on the employee," are added.

Subdivisions (b)(3)(A) and (B) are added and state:

"(A) The DWC-AD 10133.53 (Section 10133.53) or form DWC-AD 10118 (Section 10118) filed with the Retraining and Return to Work Unit on the employee shall contain a proof of service on the employee.

(B) The employee, or their representative, within the time specified in the form DWC-AD 10133.53 (Section 10133.53) to offer modified or alternative work or form DWC-AD 10118 (Section 10118) shall file the completed form as paper document under section 10232."

Subdivision (e) is amended to change the case for the terms "workers' compensation administrative law

judge,” and “appeals board.” The references section is amended to change the case for the word “writ.”

Amended §10118. Form [DWC AD 10118 Notice of Offer of Work]

This section amends former section 10003. The form is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Amended §10119. Return to Work Program

This section amends former section 10004.

Subdivisions (d), (e), (i), and (j) are amended to change the case for the term “administrative director.”

Subdivision (h) is amended to delete the sentence: “Requests should be sent to the mailing address for the Division of Workers’ Compensation Return to Work Program that is listed in the web site of the Division of Workers’ Compensation, at: http://www.dir.ca.gov/dwc/dwc_home_page.htm”

Subdivision (k) is amended to change the case for the terms “administrative director” and “declaration of readiness to proceed.” The words “with the district office of the Workers’ Compensation Appeals Board” and the sentence: “A copy of the Declaration of Readiness to Proceed and the petition shall be concurrently served on the Administrative Director.” are deleted.

Amended §10120. Form [DWC AD 10120 Request for Reimbursement of Accommodation Expenses]

This section amends former section 10005. The form is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Amended §10123. Vocational Rehabilitation Reporting Requirements.

The title of the section is changed to “Vocational Rehabilitation Reporting Requirements.”

Subdivisions (a) through (f) are deleted. Former subdivisions (g) and (h) are now (a) and (b).

The reference is amended to add the significant panel case of *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Amended §10127. Dispute Resolution.

Subdivision (a)(1) is amended to replace the words “forward to” with “file with,” to add the word “a”, and to delete the words “to the correct Rehabilitation Unit district office.”

Subdivision (c) is amended as follows:

“Excluding (a) above, all other requests for Rehabilitation Unit dispute resolution shall be submitted by completing a Request For Dispute Resolution, DWC Form RU-103, and attaching all medical and vocation-

al reports not previously submitted to the Rehabilitation Unit filed, along with and a format summary of the Informal Conference. The format summary identifies the disputed issues and the positions of the parties, including supporting information which shall be attached. The request for dispute resolution and all attached documentation shall be served on the parties.”

The words “or updated” are deleted from subdivision (e).

The reference is amended to add the significant panel case of *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Amended §10127.1. Conferences.

Subdivision (c) is amended as follows:

“(c) If the dispute is resolved by the parties before the conference has been held, the party who requested the conference shall contact the Rehabilitation Unit for permission to cancel the conference. The Rehabilitation Unit shall notify the parties of the cancellation. ~~If permission to cancel is given, the requesting party shall notify all parties of the cancellation, and forward, in writing to the Rehabilitation Unit, with copies to all parties, notification that the conference has been cancelled. The requesting party shall include in the notification the issues(s) in dispute and the resolution reached by the parties.”~~

The reference is amended to add the significant panel case of *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Amended §10128. Request for Order of Rehabilitation Services.

This section has been amended as follows:

“If the claims administrator fails to voluntarily provide services, subsequent to the employee’s written demand with substantiation of eligibility for services upon the claims administrator, the employee may, on DWC Form RU-103 “Request for Dispute Resolution”, request the Rehabilitation Unit to order the provisions of vocational rehabilitation services at the expense of the employer. A copy of the demand and copies of all medical and vocational reports not previously filed including a listing of documents shall be attached to the DWC Form RU-103, with a completed Case Initiation Document, DWC form RU-101. Medical reports filed by the parties will be returned upon request.”

The reference is amended to add the significant panel case of *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the re-

pealed vocational rehabilitation statutes remain applicable to prior injuries.

Amended §10133.13. Form RU-102 “Vocational Rehabilitation Plan” and Form Filing Instructions.

Form RU 102 is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

The reference is amended to add the significant panel case of *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Amended §10133.14. Form RU-103 “Request for Dispute Resolution” and Form Filing Instructions.

Form RU-103 is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

The reference is amended to add the significant panel case of *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Amended §10133.16. Form RU-105 “Notice of Termination of Vocational Rehabilitation Services” and Form Filing Instructions.

Form RU-105 is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

The reference is amended to add the significant panel case of *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Amended §10133.22. Form RU-122 “Settlement of Prospective Vocational Rehabilitation Services” and Form Filing Instructions.

Form RU-122 is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

The reference is amended to add the significant panel case of *Godinez v. Buffets, Inc.* (2004) 69 Cal.Comp.Cases 1311, in which the WCAB held the repealed vocational rehabilitation statutes remain applicable to prior injuries.

Repealed §10133.3. Rehabilitation File Retention.

This section has been repealed. File retention is now found in proposed section 10116.5.

Repealed §10133.50. Definitions.

Section 10133.50 is repealed. The terms previously listed are now found in amended section 10116.8.

Amended §10133.53. Form DWC-AD 10133.53 “Notice of Offer of Modified or Alternative Work.”

Form DWC-AD 10133.53 is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Amended §10133.54. Dispute Resolution.

Subdivision (b)(4) is amended as follows:

“(4) Submit the original a copy of the request and all attached documents to the Administrative Director and serve a copy of the request and all attached documents on all parties; and”

Subdivisions (c), (d), (e), and (f) change the case for the term “administrative director.”

Subdivision (g) is amended as follows:

“(g) Either party may appeal the determination and order of the Administrative Director by filing a written petition together with a Declaration of Readiness to Proceed pursuant to section 10114 10250 with the local district office of the Workers’ Compensation Appeals Board within twenty calendar days of the issuance of the decision or within twenty days after a request is deemed denied pursuant to subdivision (f). The petition shall set forth the specific factual and/or legal reason(s) for the appeal. A copy of the petition and a copy of the Declaration of Readiness to Proceed shall be concurrently served on the Administrative Director.”

Amended §10133.55. Form DWC-AD 10133.55 “Request for Dispute Resolution Before the Administrative Director.”

Form DWC-AD 10133.55 is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Amended §10133.56. Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher.

Subdivision (c) is amended as follows:

“(c) When the requirements under subdivision (b) have been met, the claims administrator shall provide a nontransferable voucher for education-related retraining or skill enhancement or both to the employee within 25 calendar days from the issuance of the permanent partial disability award by the Workers’ Compensation Administrative Law Judge or the Workers’ Compensation Appeals Board.

(1) The employer shall file the form DWC-AD 10133.57 with the Retraining and Return to Work Unit simultaneously with serving the employee. The claims administrator may serve the offer of work on behalf of the employer.

(2) After the service of the form on the employee, the employer shall file a completed proof of service with the Retraining and Return to Work Unit.”

Subdivision (d) is amended as follows:

“(d) The voucher shall be issued to the employee allowing direct reimbursement to the employee upon the employee’s presentation to the claims administrator of

documentation and receipts or as a direct payment to the provider of the education related training or skill enhancement and/or to the VRTWC. The employer, or its representative, shall file the completed form DWC-AD 10133.57 with the Retraining and Return to Work Unit pursuant to section 10232.

Amended §10133.57. Form DWC-AD 10133.57 “Supplemental Job Displacement Nontransferable Training Voucher Form.”

Form DWC-AD 10133.57 is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Amended §10133.58. State Approved or Accredited Schools.

Subdivision (b)(1) is deleted because the Bureau for Private Postsecondary and Vocational Education is no longer funded, and the remaining subdivisions are re-numbered.

Subdivision (c) is amended as follows:

(c) Any training outside of California must be approved by one of the Regional Associations of Schools and Colleges authorized by the United States Department of Education ~~an agency in that state similar to the Bureau for Private Postsecondary and Vocational Education.~~

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private persons or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations will not affect small businesses. The businesses that are subject to these regulations are insurers, self-insured employers (who must by regulation have substantial net worth and income) and third party administrators, all of whom do not qualify as “small business.”

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: The proposed regulations will not increase costs on State agencies or cost/savings in federal funding to the State.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See “Local Mandate” section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See “Local Mandate” section above.)

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director’s attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code § 11346.45, the text of the draft proposed regulations was made available for

pre-regulatory public comment through the Division's Internet message board (the DWC Forums).

**AVAILABILITY OF INITIAL STATEMENT
OF REASONS, TEXT OF PROPOSED
REGULATIONS, RULEMAKING FILE
AND DOCUMENTS SUPPORTING THE
RULEMAKING FILE / INTERNET ACCESS**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations, pre-rulemaking comments, and the Form 399.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations — Rulemaking" link and scroll down the list of rulemaking proceedings to find the current "Retraining and Return to Work" rulemaking link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

**BACKUP CONTACT/PERSON CONTACT
PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact persons:

Destie Overpeck (doverpeck@dir.ca.gov)
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the backup contact person is (510) 286-7100.

**AVAILABILITY OF CHANGES
FOLLOWING PUBLIC HEARING**

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: www.dir.ca.gov.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, commencing with section 10116.

**TITLE 8. DIVISION OF WORKERS'
COMPENSATION**

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

NOTICE OF PROPOSED RULEMAKING

**Subject Matter of Regulations:
Rules of the Court Administrator
Electronic Adjudication Management System
(EAMS)**

**TITLE 8. CALIFORNIA CODE OF
REGULATIONS**
Sections 10210 et seq.

NOTICE IS HEREBY GIVEN that the Court Administrator of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code sections 133, 5307(c), 5500.3 and 5502, proposes to adopt regulations within Article 1, Subchapter 1.9 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10210, relating to the Electronic Adjudication Management System (EAMS) and workers' compensation adjudication files at the trial level.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt regulations within Article 1, Subchapter 1.9 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10210, relating to the Electronic Adjudication Management System (EAMS) and workers' compensation adjudication files at the trial level.

Repealed §10250. Payment of Medical Provider and Medical-Legal Lien Claimant Initial Lien Filing Fees. Rules of the Court Administrator

Article 1. Definitions and General Provisions

Proposed §10210. Definitions.

Proposed §10211. Compliance with Rules of the Court Administrator.

Proposed §10212. District Office Records Not Subject to Subpoena.

Proposed §10213. Ex Parte and Prohibited Communications.

Proposed §10214. Compromise and Release forms and Stipulation with Request for Award forms.

Article 2. The Electronic Adjudication Management System

Proposed §10215. Case Names and Case Index.

Proposed §10216. Adjudication Files.

Proposed §10217. Official Address Record and Duty to Furnish Correct Address.

Proposed §10218. Designated Preferred Method of Service.

Proposed §10223. Corrective Measures for Misfiled or Misdirected Documents into the Case Management System.

Proposed §10225. Extended System Unavailability.

Article 3. Filing of Documents by Parties or Lien Claimants.

Proposed §10228. Place of Filing Documents.

Proposed §10229. Manner of Filing Documents.

Proposed §10230. Time of Filing Documents.

Proposed §10232. Form and Size Requirements for Filed Documents.

Proposed §10232.1. Document cover sheet form.

Proposed §10232.2. Document separator sheet form.

Proposed §10233. Filing of Medical Reports, Medical-Legal Reports, and Various Records.

Proposed §10235. Improper Filing of Documents.

Proposed §10236. Filing of Copies of Documents.

Article 4. Appearances, the Form of Minutes of Hearings and Minute Orders

Proposed §10240. Appearances Required.

Proposed §10241. Failure to Appear.

Proposed §10243. Continuances.

Proposed §10244. Appearances in Settled Cases.

Proposed §10245. Minutes of Hearing form.

Proposed §10246. Electronically Filed Decisions, Findings, Awards, and Orders.

Article 5. Declarations of Readiness to Proceed and Objections and Hearing Calendars

Proposed §10250. Declaration of Readiness to Proceed.

Proposed §10251. Objection to Declaration of Readiness to Proceed.

Amended §10252. Expedited Hearing Calendar.

Amended §10252.1. Expedited Hearing form.

Proposed §10253. Settlement Conference Calendar.

Proposed §10253.1. Pre-trial Conference Statement form.

Proposed §10254. Priority Conference Calendar.

Article 6. Consolidation Procedures

Proposed §10260. Assignment of Consolidated Cases.

Article 7. Access to Records and Retention of Records

Proposed §10270. Access to and Viewing Adjudication Files.

Proposed §10272. Sealing Documents.

Proposed §10273. Retention, Return and Destruction of Records and Exhibits.

Proposed §10275 Recording of Trial Level Proceedings.

Article 8. Procedures for Requesting Immediate Action by a Judge

Proposed §10280. Walk-Through Documents.

Proposed §10281. Emergency Petitions for Stay.

Article 9. Review of Administrative Orders issued by the Administrative Director

Proposed §10290. Petition Appealing Order Granting or Denying Petition for Order Requiring Employee to Select Employer-Designated Physician.

Proposed §10291. Petition Appealing Notice of Compensation Due.

Proposed §10293. Petition Appealing Order of the Rehabilitation Unit.

Proposed § 10294. Petition Appealing Determination of a Return to Work Reimbursement.
Proposed § 10294.5. Petition Appealing Determination Regarding Supplemental Job Displacement Benefits.

Article 10. Arbitration

Proposed § 10295. Mandatory Arbitration.
Proposed § 10296. Voluntary Arbitration.
Proposed § 10297. Arbitration Submittal form.

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

Date: Monday, July 14, 2008

Time: 10:00 a.m. to 5:00 p.m. or conclusion of business

Place: Ronald Reagan State Building,
Auditorium
300 South Spring Street
Los Angeles, CA 90013

Date: Tuesday, July 15, 2008

Time: 10:00 a.m. to 5:00 p.m. or conclusion of business

Place: Elihu Harris State Building, Auditorium
1515 Clay Street
Oakland, CA 94612

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Court Administrator requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on July 15, 2008**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m. on July 15, 2008**.

AUTHORITY AND REFERENCE

The Court Administrator is undertaking this regulatory action pursuant to the authority vested in the Court Administrator by Labor Code sections 133, 5307(c), 5500.3 and 5502.

Reference is to Labor Code §§110, 126, 127, 129, 129.5, 133, 138.7, 139.5, 4053, 4054, 4600, 4603, 4604, 4645, 5001, 5270-5277, 5300, 5301, 5307, 5316, 5500, 5501.5, 5501.6, 5500.3, 5502, 5504, 5700, 5702, 5708, 5710, and 5813.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

In 2002, Assembly Bill 749 (AB 749, Stats. 2002, Ch. 6), created the position of court administrator. Labor Code section 5307 was amended to provide that the court administrator "shall adopt reasonable, proper, and uniform rules for district office procedure regarding trial level proceedings of the workers' compensation appeals board." The rules shall include regulations regarding "conferences, hearings, continuances, and oth-

er matters deemed reasonable and necessary to expeditiously resolve disputes.” The court administrator shall also promulgate forms to be used at all trial level proceedings.

Labor Code section 110(f) defines the court administrator as “the administrator of the workers’ compensation adjudicatory process at the trial level.”

Labor Code section 127 allows the court administrator to charge and collect fees for copies and papers, certified copies of official documents and orders or of the evidence taken or proceedings had, for transcripts of testimony, and for inspection of case files not stored in the place where the inspection is requested.

Labor Code section 127.5 provides that the court administrator “shall further the interests of uniformity and expedition of proceeding before workers’ compensation administrative law judges, assure that all workers’ compensation administrative law judges are qualified and adhere to deadlines mandated by the law or regulations, and manage district office procedural matters at the trial level.”

Labor Code section 5500.3(a) also requires the court administrator to establish uniform district office procedures, uniform forms, and uniform time of court settings for all district offices of the appeals board.

Labor Code section 5502 provides that the court administrator prescribe a form for the declaration of readiness to proceed. It also requires the court administrator to establish a priority calendar for issues requiring an expedited hearing and decision and a priority conference calendar for employees represented by an attorney when the issues in dispute are employment or injury arising out of employment or in the course of employment.

In fiscal year 2004 to 2005, the Senate Bill 1113 (SB 1113, Stats. 2004, Ch. 208)¹ authorized funds for the Electronic Adjudication Management System (EAMS). EAMS is a computer based system that will

simplify and improve the DWC case management process to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users and transform paper files into secure electronic files, reducing the need for physical storage space at local district offices and the State Records Center. EAMS will replace the current workers’ compensation court technology and supporting infrastructure.

Prior to the creation of the court administrator position, most of the rules pertaining to the district office procedures and forms were promulgated by the Workers’ Compensation Appeals Board. The rules that were previously within the jurisdiction of the Workers’ Compensation Appeals Board will be repealed by the Workers’ Compensation Appeals Board in their rulemaking, which will be filed with the Office of Administrative Law. This rulemaking establishes uniform procedures and forms for the district offices of the appeals board. It also sets forth the procedures for filing required in EAMS. This rulemaking implements the first stage of EAMS (the internal go-live stage), which is to store the information electronically to allow for internal users to maintain and search for documents. At the Division of Workers’ Compensation (DWC) internal go-live, external participants will continue to file on paper using new forms that employ optical character recognition (OCR). The OCR forms will be available online on the EAMS Web page. Forms and documents will be scanned into EAMS by DWC employees at district offices.

These proposed regulations implement, interpret, and make specific the sections of the Labor Code pertaining to the jurisdiction of the court administrator and EAMS as follows:

Repealed Section 10250 Payment of Medical Provider and Medical Legal Lien Claimant Initial Lien Filing Fees

This section is repealed. This regulation implemented Labor Code section 4903.05, which required a filing fee for liens. Labor Code section 4903.05 was repealed on July 1, 2006.

Proposed Section 10210 Definitions

This proposed section defines key terms to ensure that their meaning within the regulations will be clear to the workers’ compensation community. The terms are defined as follows:

(a) “Adjudication file” or “ADJ file” means a case file in which the jurisdiction of the Workers’ Compensation Appeals Board has been invoked and which is maintained by the Division of Workers’ Compensation in paper format, or electronic format, or both, including a temporary paper case file.

¹ **Senate Bill No. 1113**

“CHAPTER 208

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 31, 2004. Filed with Secretary of State July 31, 2004.]

7350-001-0223-For support of Department of Industrial Relations, for payment to Item 7350-001-0001, payable from the Workers’ Compensation Administration Revolving Fund
..... 127,345,000”

* * *

“4. Funds appropriated in this item for the development of a workers’ compensation case management system shall not be available for expenditure until a Feasibility Study Report is approved by the Department of Finance.”

The Feasibility Study Report was approved in 2004.

(b) "Administrative director" means the administrative director of the Division of Workers' Compensation or his or her designee.

(c) "Appeals board" means the commissioners and deputy commissioners of the Workers' Compensation Appeals Board acting en banc, in panels, or individually.

(d) "Applicant" means any person asserting a right to relief under the provisions of Labor Code section 5300.

(e) "Application for adjudication" or "application" means the initial pleading that asserts a right to relief under the provisions of Labor Code section 5300.

(f) "Court administrator" means the administrator of the workers' compensation adjudicatory process at the trial level, or his or her designee.

(g) "Declaration of readiness to proceed" or "declaration of readiness" means a request for a proceeding before the district office.

(h) "Declaration of readiness to proceed to expedited hearing" means a request for a proceeding before the district office pursuant to Labor Code section 5502(b).

(i) "Defendant" means any person against whom a right to relief is claimed.

(j) "District office" means a trial level workers' compensation court.

(k) "Document" is a pleading, petition, medical report, record, declaration, exhibit, or another filing submitted by a party or lien claimant, including an electronically scanned version of a document that was filed in paper form. Each medical report or other record having a different author and/or a different date of service is a separate "document."

(l) "Document cover sheet" means Form 10232.1, which is placed on top of a document or set of documents filed at one time in a specific case.

(m) "Document separator sheet" means Form 10232.2, which is placed on top of each individual document, when one or more documents are being filed at the same time in the same case and placed on top of each individual attachment to each document being filed, when a document has one or more attachments.

(n) "Electronic Adjudication Management System" or "EAMS" means the computerized case management system used by the Division of Workers' Compensation to store and maintain adjudication files and to perform other case management functions.

(o) "Electronic signature" means a signature electronically affixed by a workers' compensation administrative law judge or by the appeals board to any decision, findings, award, order or other document.

(p) "Fax" means a document that has been electronically served by a fax machine.

(q) To "file" a document means to deliver a document or cause it to be delivered to the district office with ven-

ue or to the appeals board for the purpose of having it included in the adjudication file.

(r) "Hearing" means any trial, mandatory settlement conference, rating mandatory settlement conference, status conference, lien conference, or priority conference.

(s) "Lien claimant" means any person claiming payment under the provisions of Labor Code section 4903 or 4903.1.

(t) "Lien conference" means a proceeding for the purpose of assisting the parties in resolving disputed lien claims pursuant to Labor Code section 4903 or 4903.1 or, if the dispute cannot be resolved, to frame the issues and stipulations in preparation for a lien trial.

(u) "Mandatory settlement conference" means a proceeding to assist the parties in resolving their dispute or, if the dispute cannot be resolved, to frame the issues and stipulations in preparation for a trial.

(v) "Optical character recognition form" or "OCR form" means a paper form designed to be scanned so that its information is automatically extracted and stored in EAMS.

(w) "Party" means: (1) a person claiming to be an injured employee or the dependent of an injured employee; (2) a defendant; or (3) a lien claimant where either (A) the underlying case of the injured employee or the dependent of an injured employee has been resolved or (B) the injured employee or the dependent of an injured employee chooses not to proceed with his, her, or their case.

(x) "Petition" means any document filed containing a request for action other than an application for adjudication, an answer or a declaration of readiness to proceed.

(y) "Priority conference" means a proceeding in which the applicant is represented by an attorney and the issues in dispute at the time of the proceeding include employment and/or injury arising out of and in the course of employment.

(z) "Rating mandatory settlement conference" means a mandatory settlement conference conducted to facilitate the determination of the existence and extent of permanent disability through the use of informal ratings issued by the Disability Evaluation Unit, where the only unresolved issues are permanent disability and the need for future medical treatment.

(aa) "Regular hearing" means a trial.

(bb) To "serve" a document means to personally deliver a copy of the document, or to send it in a manner permitted by these rules and the rules of the appeals board, to a party, lien claimant, or attorney who is entitled to a copy of the document.

(cc) "Status conference" means a proceeding set for the purpose of ascertaining if there are genuine disputes

requiring resolution, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of facilitating preparation for trial if a trial is necessary.

(dd) "Submission" means the closing of the record to the receipt of further evidence or argument.

(ee) "Trial" means a proceeding set for the purpose of receiving evidence.

(ff) "Venue" means the district office, as established by Labor Code section 5501.5 or 5501.6, at which any proceedings will be conducted and from which any district office orders, decisions, or awards will be issued.

(gg) "Workers' compensation administrative law judge" as defined in Labor Code section 123.7 includes pro tempore judges appointed pursuant to California Code of Regulations, title 8, section 10350.

Proposed Section 10211 Compliance with Rules of the Court Administrator.

This proposed section provides that the failure to comply with the rules of the court administrator shall be deemed a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay unless that failure results from mistake, inadvertence, surprise, or excusable neglect.

Proposed Section 10212 District Office Records Not Subject to Subpoena.

Subdivision (a) of this proposed section provides that the records, files and proceedings of the district office shall not be taken from its offices either on informal request or in response to a subpoena duces tecum or any order issued out of any other court or tribunal. The records, files and proceedings of the district office shall not be produced pursuant a subpoena issued under Labor Code section 130.

Subdivision (b) of this proposed section provides that certified copies of portions of the records shall be delivered upon payment of fees as provided in California Code of Regulations, title 8, section 9990.

Proposed Section 10213 Ex Parte and Prohibited Communications.

Subdivision (a) of this proposed section provides that no document, including letters or other writings, shall be filed by a party or lien claimant with the district office unless service of a copy is made on all parties together with the filing of a proof of service. When a workers' compensation administrative law judge receives an ex parte letter or other document from any party or lien claimant in a case pending before the workers' compensation administrative law judge, he or she shall serve copies of the letter or document on all other parties to the case with a cover letter explaining that the letter or document was received ex parte in violation of this rule.

Subdivision (b) of this proposed section provides that no party or lien claimant shall discuss with a workers'

compensation administrative law judge the merits of any pending case without the presence of all necessary parties to the proceeding, except as provided by these rules.

Subdivision (c) of this proposed section provides that all correspondence concerning the examination and reports of a physician appointed pursuant to Labor Code section 5701 or 5703.5 shall be made through the workers' compensation administrative law judge, and no party, attorney or representative shall communicate with that physician with respect to the merits of the case unless ordered to do so.

Proposed Section 10214 Compromise and Release forms and Stipulation with Request for Award forms.

This proposed section provides that the listed optical character recognition forms shall be used to settle case by either a compromise and release or stipulation with request for award. The forms listed are: stipulation with request for award; stipulation with request for award, death case; compromise and release; compromise and release, dependency claim; and compromise and release, third party settlement. The forms, which are numbered 10241(a), 10214(b), 10214(c), 10214(d) and 10214(e) are included in this section.

Proposed Section 10215 Case Names and Case Index.

This proposed section provides that an index of all cases filed with a district office shall be maintained in EAMS under the name of the person claimed to have been injured or the identification assigned to that person, whether or not that person is an applicant. Reference to the case shall be by the name of the injured person and the case number.

Proposed Section 10216 Adjudication Files.

Subdivision (a) of this proposed section provides that all cases filed on and after the effective date of these regulations shall be maintained by the Division of Workers' Compensation in an electronic format in EAMS. All paper documents properly filed in such cases shall be scanned into the EAMS adjudication file and then destroyed.

Subdivision (b) of this proposed section provides that except as provided in section 10273, the Division of Workers' Compensation shall maintain a paper adjudication file until it is converted to an electronic adjudication file. If, however, a paper adjudication file is maintained on or after the effective date of these regulations, an electronic adjudication file shall also be created and any documents filed thereafter shall be maintained electronically in EAMS, in accordance with subdivision (c).

Subdivision (c) of this proposed section provides that a paper adjudication file or a portion of a paper adjudication file may be converted to an electronic adjudication file by the Division of Workers' Compensation at any time. If a paper adjudication file is completely scanned into EAMS the Division of Workers' Compensation shall notify the parties to the case of the change in how the file is maintained; and the paper adjudication file may be destroyed.

Proposed Section 10217 Official Address Record and Duty to Furnish Correct Address.

Subdivision (a) of this proposed section provides that the Division of Workers' Compensation shall maintain an official address record for each adjudication file, which shall contain the names and mailing addresses of all parties and lien claimants, and their attorneys or agents of record. In addition, where parties and lien claimants, or their attorneys or agents of record, have provided or have been required to provide telephone numbers, fax numbers or electronic mail addresses, the official address record shall contain these numbers and addresses.

Subdivision (b) of this proposed section provides that every attorney, every party, every lien claimant, and every representative of any party or lien claimant having an interest in an active case pending before the district office or appeals board shall advise the district office and all parties of any change of mailing address, as well as any change of telephone numbers, fax numbers or electronic mail addresses, where provided or required, by furnishing the current information within five business days of any change.

Subdivision (c) of this proposed section provides that every lien claimant that has filed a lien in a case pending in a district office shall advise all parties within five business days of any change in the identity and/or telephone number of the person with authority to resolve the lien by furnishing the correct name and daytime telephone number of that person to the interested parties; and shall advise the Division of Workers' Compensation of any such change after a declaration of readiness is filed.

Subdivision (d) of this proposed section provides that every party, attorney, hearing representative and lien claimant having an interest in an inactive case: (1) shall advise all other known parties, lien claimants, attorneys, and hearing representative within five business days of any change of address (which shall include any change of mailing address, as well as any change of telephone numbers, fax numbers or electronic mail addresses, where provided or required) by furnishing the correct and current address and/or number; and (2) shall advise the Division of Workers' Compensation of any

such change within five business days if there is an outstanding award of further medical treatment or if there is continuing jurisdiction pursuant to Labor Code sections 5410, 5803 and 5804.

Proposed §10218

Designated Preferred Method of Service.

Subdivision (a) of this proposed section provides that a party, a lien claimant, or an attorney or other representative for a party or lien claimant may designate first class mail, electronic mail or fax as their preferred method of service for receiving documents from the district office and the appeals board. A party, a lien claimant, or an attorney or other representative for a party or lien claimant who does not designate a preferred method of service shall be served by first class mail.

Subdivision (b) of this proposed section provides that a represented party, a lien claimant, or an attorney or other representative for a party or lien claimant may agree that his, her, or its designated preferred method of service may be utilized for receiving documents from any other represented party, lien claimant, or attorney or other representative for a party or lien claimant. Absent such an agreement, service between these parties or entities shall be made by first class mail.

Subdivision (c) of this proposed section provides that if the service is being made by or on an unrepresented injured worker, dependent or uninsured employer, then the service shall be made by first class mail.

Subdivision (d) of this proposed section provides that a party, a lien claimant, or an attorney or other representative for a party or lien claimant may change the designated preferred method of service at any time in accordance with section 10217, subd. (b).

Proposed Section 10223 Corrective Measures for Misfiled or Misdirected Documents into the Case Management System.

Subdivision (a) of this proposed section provides that the Division of Workers' Compensation may perform document substitution on filed documents; repair scanned documents; and move documents to other adjudication files.

Subdivision (b) of this proposed section provides that a document substitution may occur where a technical problem of readability and/or legibility exists with a filed document. The filer may seek a substitution of the document by filing a petition to substitute. The proposed document for substitution must be appended to a petition to substitute. If the petition to substitute is granted, the proposed document for substitution will replace the document that was unreadable or illegible.

Subdivision (c) of this proposed section provides that a document repair may occur where a document

scanned into an electronic adjudication file by the Division of Workers' Compensation fails to reflect the original paper document. The Division of Workers' Compensation may repair the document so that the scanned image accurately reflects the original paper document. The Division of Workers' Compensation may repair a document at any time or a party may request a document be repaired. EAMS will retain as viewable the original document for those who have access to the electronic file.

Subdivision (d) of this proposed section provides that a document may be moved when a document originally scanned by the Division of Workers' Compensation is filed into the wrong electronic file.

Subdivision (e) of this proposed section provides that documents that are in the process of being substituted or repaired shall not be moved.

Proposed Section 10225 Extended System Unavailability.

Subdivision (a) of this proposed section provides if, for any reason, there is a technical failure of EAMS for longer than 24 hours, the court administrator, in his or her discretion, may declare that EAMS is unavailable for an extended period of time.

Subdivision (b) of this proposed section provides that after issuing a declaration of extended system unavailability, the court administrator shall issue an order that includes, but is not limited to the following determinations:

- (1) requiring that the district office or the appeals board shall serve all documents by first class mail;
- (2) providing that filed documents shall be maintained in temporary paper adjudication files;
- (3) providing that the time for performing any action, whether by the parties or by the district office, shall be extended by a specified period or until EAMS is declared to be operational; or
- (4) requiring or allowing any other actions or remedies, as deemed appropriate under the circumstances.

Subdivision (c) of this proposed section provides that the court administrator shall post the declaration of extended system unavailability on the website of the Division of Workers' Compensation, if the website remains operational, and shall post it at every district office and at the office of the appeals board.

Subdivision (d) of this proposed section provides that any declaration of extended unavailability shall remain in effect until the court administrator issues a subsequent declaration that EAMS is operational.

Proposed Section 10228 Place of Filing Documents.

Subdivision (a) of this proposed section provides that after the filing and processing of an initial application

for adjudication of claim or other case opening document, all documents required or permitted to be filed under these regulations or under the rules of the appeals board shall be filed only with the district office having venue, except as provided by subdivision (b) or by the rules of the appeals board, unless otherwise ordered by a workers' compensation administrative law judge or the appeals board.

Subdivision (b) of this proposed section provides that where a petition for reconsideration, a petition for removal, or a petition for disqualification has been properly filed pursuant to rules 10840, 10843, or 10452, all answers or requests for action relating to the reconsideration, removal, or disqualification process, all requests for withdrawal of the petition for reconsideration, removal or disqualification, and all notifications of change of address from the parties or lien claimants shall be filed with the appeals board in San Francisco, except that these documents shall be filed with the district office having venue where: (1) the 15-day periods for preparation of a report under rule 10860, or for amendment or correction under rules 10859 or 10843, has not elapsed or (2) the appeals board has issued its decision on the petition for reconsideration, removal, or disqualification. The subdivision further provides that all other documents unrelated to the reconsideration, removal, or disqualification process shall be filed with the district office having venue.

Subdivision (c) of this proposed section provides that documents received in any other district office or the office of the appeals board in San Francisco, except as provided by subsections (a) and (b) of this regulation or by the rules of the appeals board, shall not be accepted for filing or deemed filed and shall not be acknowledged or returned to the filing party and may be discarded. The subdivision further provides that such documents, however, may be returned where the filing party includes a self addressed envelope with sufficient return postage. In any proceeding before a workers' compensation administrative law judge or the appeals board, the judge or the board may excuse a failure to comply with this rule resulting from mistake inadvertence, surprise, or excusable neglect.

Subdivision (d) of this proposed section provides that all case opening documents shall be given a case number by the district office where no case number has been previously assigned for the injured worker for the alleged date of injury. If a case number has been previously assigned by the Division of Workers' Compensation, the prefix "ADL" shall precede the assigned case number when a form or document is filed.

Subdivision (e) of this proposed section provides that a document that has been sent by electronic mail or by fax directly to the district office or the appeals board shall not be accepted for filing or deemed filed, shall not

be acknowledged, and may be discarded unless otherwise ordered by the workers' compensation administrative law judge or the appeals board.

Proposed Section 10229 Manner of Filing Documents.

Subdivision (a) of this proposed section provides that except as provided by section 10603, subd. (a), all documents shall be filed in paper form.

Subdivision (b) of this proposed section provides that all paper documents shall be scanned into the electronic adjudication file and then destroyed, unless otherwise provided by these rules or ordered by a workers' compensation administrative law judge or the appeals board. A scanned document shall have the same legal effect as a document filed in paper form.

Subdivision (c) of this proposed section provides that each of the following persons or entities shall file optical character recognition forms completed by using a computer or typewriter:

- (1) any attorneys representing any party or any lien claimant;
- (2) any insurance carrier or any representative of any insurance carrier (including any claims adjuster);
- (3) any self-insured employer or any representative of a self-insured employer (including any claims adjuster);
- (4) any third-party administrator or any representative of a third-party administrator (including any claims adjuster); and
- (5) any lien claimant or any representative of any lien claimant, with the exception of: (A) a lien claimant (or a non-attorney representative of a lien claimant) asserting a living expenses lien under Labor Code section 4903(c); (B) a lien claimant (or a non-attorney representative of a lien claimant) asserting a burial expenses lien under Labor Code section 4903(d); or (C) a nongovernmental lien claimant (or a non-attorney representative of a lien claimant) asserting a spousal or child support expenses lien under Labor Code section 4903(e).

Subdivision (d) of this proposed section provides that all unrepresented employees, dependents, uninsured employers, or lien claimants listed in subdivision (c)(5)(A), (B) or (C) shall utilize optical character recognition forms, where such forms are required, but if they do not have ready access to a computer or typewriter, the form may be hand-printed in ink.

Subdivision (e) of this proposed section provides that whenever any party or lien claimant files any document utilizing an optical character recognition form, the

party or lien claimant shall use the appropriate OCR form required by these rules.

Proposed Section 10230 Time of Filing Documents.

Subdivision (a) of this proposed section provides a paper document, including one filed by mail (regardless of when posted), is deemed filed on the date it is received, if received prior to 5 p.m. of a court day (i.e., Monday through Friday, except designated State holidays). A paper document received after 5 p.m. of a court day shall be deemed filed as of the next court day.

Subdivision (b) of this proposed section provides that when a document is filed by mail or by personal service, the appeals board or the district office that received the document for filing shall affix on it an appropriate endorsement as evidence of receipt. The endorsement may be made by handwriting, hand-stamp, electronic date stamp, or by other means.

Proposed Section 10232 Form and Size Requirements for Filed Documents.

Subdivision (a) of this proposed section provides that all documents except the medical reports of treating physicians, secondary physicians, qualified or agreed medical evaluators and proposed exhibits, shall be filed in accordance with the following standards:

- (1) Only one side of each paper shall be used;
- (2) All documents shall be printed with black ink on white paper that is 8 1/2 x 11 inches and at least twelve pound weight. All margins shall be at least 1 inch and shall be without typed or handwritten text in any margin;
- (3) The first page shall include a case caption that shall include the name of the injured worker or dependent claiming benefits, the name of the employer and the employer's insurer or indicating the employer is self-insured and a case number if one has been assigned by the district office. If a case number has been assigned the number shall be preceded by the abbreviation "ADJ";
- (4) All non-form legal pleadings shall contain a heading above the case caption containing the name of the filing attorney and their state bar membership number and the attorney's law firm name and address.
- (5) Except as otherwise provided in this section, documents shall be printed in Times New Roman, Times, Courier, Palatino, Century Schoolbook or similar serif font of at least 12 points in size;

(6) No single document shall exceed 25 pages in length without the prior permission of the appeals board or the presiding workers' compensation administrative law judge of the district office with venue over the case;

(7) The text of a document shall be double spaced or one and one half spaces; however, captions, headings, headers, footnotes, footers and block quotations shall be single spaced.

Subdivision (b) of this proposed section provides that all documents shall be filed with document cover sheets and document separator sheets as follows:

(1) A completed document cover sheet shall be the first page of each individual document or set of documents filed at one time in the same case. A document separator sheet shall precede each document within a set of documents.

(2) If an individual document that includes an attachment, a completed document separator sheet shall precede the attachment and if an individual document includes multiple attachments, a document separator sheet shall precede each individual attachment.

(3) This subdivision shall not apply to any unrepresented employees, dependents or uninsured employers who do not have ready access to document cover sheets and document separator sheets.

Subdivision (c) of this proposed section provides that oversized documents shall be filed only at the time of trial in accordance with the provisions of section 10603.

Subdivision (d) of this proposed section provides that if an unrepresented worker, an unrepresented uninsured employer, or an unrepresented dependent does not have ready access to a computer or typewriter and compliance with subdivisions (a)(3) and (a)(5) is not feasible, a hand-printed document may be submitted. Any hand-printed document shall be legible and shall otherwise comply with subdivision (a), including the requirements of subdivision (a)(3) regarding margins and text in the margins.

Proposed Section 10232.1 Document cover sheet form.

This section provides the mandatory document cover sheet form, which is placed on top of a document or set of documents filed at one time in a specific case when filing with EAMS.

Proposed Section 10232.2 Document separator sheet form.

This section provides the mandatory document separator sheet form, which is placed on top of each individual document, when one or more documents are being filed at the same time in the same case and placed on top

of each individual attachment to each document being filed, when a document has one or more attachments.

Proposed Section 10233 Filing of Medical Reports, Medical-Legal Reports, and Various Records.

Subdivision (a) of this proposed section provides that except as provided by section 10603, medical reports, medical-legal reports, and medical records, and other records and documents shall be filed only in accordance with the following provisions.

Subdivision (b) of this proposed section applies where a declaration of readiness (other than a declaration of readiness for an expedited hearing) is being filed, including a walk-through declaration of readiness.

Paragraph (1) provides that when filing of a declaration of readiness, the filing party or lien claimant shall file the report of any agreed medical evaluator and any qualified medical evaluator that: (A) are then in its possession or control, (B) are relevant to the issue being raised by the declaration of readiness, and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time, unless otherwise ordered by the appeals board or a workers' compensation administrative law judge.

Paragraph (2) provides that when filing of an objection to a declaration of readiness, or within ten days of the filing of the declaration of readiness if no objection is timely filed, each opposing party or lien claimant shall file the report of any agreed medical evaluator and any qualified medical evaluator that: (A) are then in its possession or control, (B) are relevant to the issue being raised by the declaration of readiness, and (C) have not been filed previously. No other medical reports, medical-legal reports, medical records, or other documents shall be filed at that time, unless otherwise ordered by the appeals board or a workers' compensation administrative law judge.

Subdivision (c) of this proposed section applies where a declaration of readiness for an expedited hearing is being filed.

Paragraph (1) provides that when filing of a declaration of readiness for an expedited hearing, the filing party or lien claimant shall file the report of any agreed medical evaluator, any qualified medical evaluator, and any treating physician that: (A) are then in its possession or control, (B) are relevant to the issue being raised by the declaration of readiness, and (C) have not been filed previously. No other medical reports,

medical–legal reports, medical records, or other documents shall be filed at that time.

Paragraph (2) provides that when filing of an objection to a declaration of readiness for an expedited hearing, or within ten days of the filing of the declaration of readiness if no objection is timely filed, each opposing party or lien claimant shall file the report of any agreed medical evaluator, any qualified medical evaluator, and any treating physician that: (A) are then in its possession or control, (B) are relevant to the issue being raised by the declaration of readiness, and (C) have not been filed previously. No other medical reports, medical–legal reports, medical records, or other documents shall be filed at that time.

Paragraph (3) provides that all other medical reports, medical–legal reports, medical records, or other documents that are being proposed as exhibits with respect to the issue being raised by the declaration of readiness, and that have not been filed previously, shall be filed at the time of trial, unless otherwise ordered by the appeals board or a workers’ compensation administrative law judge.

Subdivision (d) of this proposed section applies where a compromise and release or a stipulations with request for award is being filed, with the exception that this subsection shall not apply when the compromise and release or the stipulations with request for award is being filed on a walk–through basis in accordance with section 10280.

Paragraph (1) provides that when filing of a compromise and release or a stipulations with request for award, the filing party shall file all agreed medical evaluator report, qualified medical evaluator report, treating physician report, and any other medical records or other records (e.g., wage statements) that: (A) are relevant to a determination of the adequacy of the compromise and release or stipulations with request for award; and (B) have not been filed previously.

Paragraph (2) provides that if the compromise and release or the stipulations with request for award is not approved, and the matter is set for a hearing on the adequacy of the proposed settlement, any additional reports, records, or other documents not previously filed that are being proposed as exhibits shall be filed at the time of the adequacy hearing, unless otherwise ordered by the appeals board or a workers’ compensation administrative law judge.

Paragraph (3) provides that if the compromise and release or the stipulations with request for award is not approved at or after the adequacy hearing, and the matter is set for a mandatory settlement

conference or trial, then any additional medical reports, medical–legal reports, medical records, or other documents that are being proposed as exhibits shall be filed in the same manner as set forth in subsections (b)(3) and (b)(4).

Subdivision (e) of this proposed section provides that excerpted portions of relevant physician, hospital or dispensary records shall be filed in accordance with section 10232.

Subdivision (f) of this proposed section provides that excerpted portions of relevant personnel records, wage records and statements, job descriptions, and other business records shall be filed in accordance with section 10232.

Subdivision (g) of this proposed section provides that at a mandatory settlement conference, all other medical reports, medical–legal reports, medical records, or other documents that are being proposed as exhibits with respect to the issue being raised by the declaration of readiness, and that have not been filed previously, shall be filed, but only if the matter is being set for trial, unless otherwise ordered by the appeals board or a workers’ compensation administrative law judge.

Subdivision (h) of this proposed section provides that at trial, any additional medical reports, medical–legal reports, medical records, or other documents that are being proposed as exhibits with respect to the issue being raised by the declaration of readiness shall be filed, unless otherwise ordered by the appeals board or a workers’ compensation administrative law judge.

Proposed Section 10235 Improper Filing of Documents.

Subdivision (a) of this proposed section provides that the following documents shall not be filed with the district office or the appeals board, except upon the order of a workers’ compensation administrative law judge or the appeals board:

- (1) letters to opposing parties or counsel;
- (2) subpoenas;
- (3) notices of taking deposition;
- (4) medical appointment letters;
- (5) proofs of service ordered pursuant to California Code of Regulations, title 8, section 10500, subd. (a);
- (6) medical reports, except as required by section 10233;
- (7) copies of any decision of any federal or state court opinion otherwise available.
- (8) copies of any decision of the appeals board or a workers’ compensation administrative law judge that is otherwise available.
- (9) duplicate medical and medical–legal reports.
- (10) no diagnostic imaging as defined in Labor Code section 139.3, subd. (b)(1), shall be

transmitted to the district office or the appeals board unless it is ordered.

Subdivision (b) of this proposed section provides that documents improperly submitted pursuant to this section shall not be accepted for filing or deemed filed and shall not be acknowledged and may be discarded.

Proposed Section 10236 Filing of Copies of Documents.

Subdivision (a) of this proposed section provides that except as provided by section 10603, subd. (a), no "original" business, medical, or other documents shall be filed with a district office.

Subdivision (b) of this proposed section provides that only a photocopy or other reproduction of an original document shall be filed, and it is presumed the filed document is an accurate representation of the original document.

Subdivision (c) of this proposed section provides that if a party or lien claimant alleges that a filed document is an inaccurate or unreliable, the party alleging the document is inaccurate or unreliable shall state the basis for the objection. The filing party must establish that the document is an accurate representation of the original document.

Subdivision (d) of this proposed section provides that a party or lien claimant that elects to retain the original of an exhibit or proposed exhibit need not retain the original after either (1) the exhibit has been authenticated at trial or (2) a settlement that resolves all pending issues has been approved and all appeals have been exhausted or the time for seeking appellate review has expired.

Proposed Section 10240 Appearances Required.

Subdivision (a) of this proposed section provides that every defendant and lien claimant, with a lien more than \$2,500, shall appear or have a representative appear at a hearing, unless the appearance is excused by the workers' compensation administrative law judge conducting the hearing. Unless the notice otherwise provides, the applicant shall be present at a mandatory settlement conference as provided in Labor Code section 5502, subd. (e), and the defendant and lien claimants whose liens have not been resolved or withdrawn shall have a person available with settlement authority.

Subdivision (b) of this proposed section provides that the person designated by the defendant or a lien claimant to be available with settlement authority need not be present if an attorney or representative who is present can obtain immediate authority by telephone.

Subdivision (c) of this proposed section provides that at the time of trial, all parties and lien claimants shall be present or have a representative appear. The defendants and lien claimants shall have a person available with

settlement authority in the same manner as set forth in subdivision (b).

Proposed Section 10241 Failure to Appear.

Subdivision (a) of this proposed section provides that where a party or a lien claimant is served with notice of trial and fails to appear either in person or by attorney or representative, the workers' compensation administrative law judge may:

- (1) dismiss the application after issuing a notice of intention to dismiss pursuant to California Code of Regulations, title 8, section 10562;
- (2) dismiss the lien claim after issuing a notice of intention to dismiss pursuant to California Code of Regulations, title 8, section 10562;
- (3) hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include notice of intention to submit the case for decision pursuant to California Code of Regulations, title 8, section 10562.

Subdivision (b) of this proposed section provides that where a party or a lien claimant is served with notice of a conference or mandatory settlement conference fails to appear at the conference, the workers' compensation administrative law judge may

- (1) dismiss the application after issuing a notice of intention to dismiss pursuant to California Code of Regulations, title 8, section 10562;
- (2) dismiss the lien claim after issuing a notice of intention to dismiss with or without prejudice pursuant to California Code of Regulations, title 8, section 10562;
- (3) close discovery and forward the case to the presiding workers' compensation administrative law judge to set for trial.

Subdivision (c) of this proposed section provides that where a party, after notice, fails to appear at either a trial or a conference and good cause is shown for failure to appear, the workers' compensation administrative law judge may take the case off calendar or may continue the case to a date certain.

Proposed Section 10243 Continuances.

This proposed section provides that requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious and are not favored. Continuances will be granted only upon a clear showing of good cause. Where possible, reassignment pursuant to section 10346 shall be used to avoid continuances.

Proposed Section 10244 Appearances in Settled Cases.

This proposed section provides that when the parties represent to the workers' compensation administrative law judge assigned to the case, the presiding workers'

compensation administrative law judge or his or her designee that a case has been settled, the case shall be taken off calendar and no appearances shall be required.

Proposed Section 10245 Minutes of Hearing form.

This proposed section is the mandatory minutes of hearing form.

Proposed Section 10246 Electronically Filed Decisions, Findings, Awards, and Orders.

This proposed section provides that the district office may electronically file any decision, findings, award, order or other document issued by a workers' compensation administrative law judge. Any document that is electronically filed shall have the same legal effect as a document in paper form.

Proposed Section 10250 Declaration of Readiness to Proceed.

Subdivision (a) of this proposed section provides that applications or petitions shall not be placed on calendar for mandatory settlement conferences, status conferences, priority conferences, expedited hearing or any other hearing unless one of the parties has filed and served a declaration of readiness to proceed in the form prescribed by the court administrator. The declaration of readiness shall be served on all other parties and lien claimants.

Subdivision (b) of this proposed section provides that all declarations of readiness to proceed shall state under penalty of perjury the moving party has made a genuine, good faith effort to resolve the dispute before filing the declarations of readiness to proceed, and shall state with specificity the same on the declarations of readiness to proceed.

Subdivision (c) of this proposed section provides that a false declaration or certification by any party, lien claimant, attorney or representative may give rise to proceedings under Labor Code section 134 for contempt or Labor Code section 5813 for sanctions.

Subdivision (d) of this proposed section provides that if a party or lien claimant is represented by an attorney or representative any declaration of readiness filed on behalf of the party shall be executed by the attorney or representative.

Proposed Section 10250.1 Declaration of Readiness to Proceed form.

This proposed section is the declaration of readiness to proceed form.

Proposed Section 10251 Objection to Declaration of Readiness to Proceed.

Subdivision (a) of this proposed section provides that any objection to a declaration of readiness to proceed shall be filed and served within ten (10) calendar days after service of the declaration. The objection shall set

forth, under penalty of perjury, specific reason why the case should not be set or why the requested proceedings are inappropriate.

Subdivision (b) of this proposed section provides that a false declaration or certification filed under this section by any party, lien claimant, attorney or representative may give rise to proceedings under Labor Code section 134 for contempt or Labor Code section 5813 for sanctions.

Subdivision (c) of this proposed section provides that if a party or lien claimant is represented, the attorney or representative shall execute any objection to the declaration of readiness to proceed on behalf of the party. Declarations of readiness to proceed shall be reviewed by the presiding workers' compensation administrative law judge or any workers' compensation administrative law judge designated by the presiding workers' compensation administrative law judge, who will determine on the basis of the facts stated in the declaration whether the objection should be sustained.

Subdivision (d) of this proposed section provides that if a party has received a copy of the declaration of readiness to proceed and has not filed an objection under this section, that party shall be deemed to have waived any and all objections to proceeding on the issues specified in the declaration, absent extraordinary circumstances.

Amended Section 10252 Expedited Hearing Calendar.

The name of this amended section has been changed from "Filing the Request" to "Expedited Hearing Calendar."

Former subdivision (a) has been deleted.

Former subdivision (b) has been changed as follows:

(b) An applicant (a) Where injury to any part or parts of the body is accepted as compensable by the employer, a party is entitled to an expedited priority hearing and decision upon the filing of an Application for Adjudication of Claim and Request for Expedited Hearing, DWC Form 4, showing of an a bona fide dispute application for adjudication of claim and a declaration of readiness to proceed pursuant to section 10250 establishing a bona fide, good faith dispute as to:

(1) the employee's entitlement to medical treatment pursuant to Labor Code section 4600;

(2) the employee's entitlement to, or the amount of, temporary disability indemnity payments or amount;

(3) appeal from a decision and order of the rehabilitation unit, enforcement thereof, or termination; or

(3) the employee's entitlement to vocational rehabilitation services, or the termination of an employer's liability to provide these services to an employee; or

(4) liability for benefits among employers;

(4) the employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves.

Former subdivisions (c) and (d) have been deleted.

Proposed subdivision (b) provides that an expedited hearing may be set upon request where injury to any part or parts of the body is accepted as compensable by the employer and the issues include medical treatment or temporary disability for a disputed body part or parts.

Proposed subdivision (c) provides that a workers' compensation administrative law judge assigned to a case involving a disputed body part or parts may redesignate the expedited hearing as a mandatory settlement conference, receive a pretrial conference statement pursuant to Labor Code section 5502, subd. (e)(3), close discovery, and schedule the case for trial on the issues presented, if the workers' compensation administrative law judge determines, in consultation with the presiding workers' compensation administrative law judge, that the case is not appropriate for expedited determination.

Proposed subdivision (d) provides that grounds for the redesignation of an expedited hearing includes, but is not limited to, cases where the direct and cross-examination of the applicant will be prolonged, or where there are multiple witnesses who will offer extensive testimony.

Proposed subdivision (e) provides that the parties are expected to submit for decision all matters properly in issue at a single trial and to produce all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense.

Labor Code sections 127 and 55502(b) have been added to the authorities and Labor Code section 5307.3 has been deleted.

Amended Section 10252.1 Expedited Hearing form.

The name of this amended section has been changed from "Form" to "Expedited Hearing form."

This proposed section is the new mandatory expedited hearing form.

Labor Code sections 127 and 55502(b) have been added to the authorities and Labor Code section 5307.3 has been deleted.

Proposed Section 10253 Settlement Conference Calendar.

Proposed subdivision (a) provides that in accordance with Labor Code section 5502, subd. (e)(2), the workers' compensation administrative law judge shall have authority to inquire into the adequacy and completeness, including provision for lien claims, of compromise and release agreements or stipulations with re-

quest for award or orders, and to issue orders approving compromise and release agreements or awards or orders based upon approved stipulations, to make orders and rulings regarding admission of evidence and discovery matters, including admission of offers of proof and stipulations of testimony where appropriate and necessary for resolution of the dispute by the workers' compensation administrative law judge, and may submit and decide the dispute on the record pursuant to the agreement of the parties. The workers' compensation administrative law judge shall not hear sworn testimony at any conference.

Proposed subdivision (b) provides that the workers' compensation administrative law judge may continue a conference to a time certain to facilitate a specific resolution of the dispute subject to Labor Code section 5502, subd. (e)(1).

Proposed subdivision (c) provides that subject to the provisions of Labor Code section 5502.5, upon a showing of good cause, the workers' compensation administrative law judge may continue a mandatory settlement conference to a date certain, may continue it to a status conference on a date certain, or may take the case off calendar. In such a case, the workers' compensation administrative law judge shall note the reasons for the continuance or order taking off calendar in the minutes. The minutes shall be served on all parties and lien claimants, and their representatives.

Proposed subdivision (d) provides that absent resolution of the dispute, the parties shall file at the mandatory settlement conference a joint pre-trial conference statement setting forth the issues and stipulations for trial, witnesses, and exhibits.

Proposed subdivision (e) provides that a summary of conference proceedings including the joint pre-trial conference statement and the disposition shall be filed by the workers' compensation administrative law judge in the adjudication file and shall be served on the parties and lien claimants.

Proposed Section 10253.1 Pre-trial Conference Statement form.

This proposed section is the new pre-trial conference statement form.

Proposed Section 10254 Priority Conference Calendar.

Proposed subdivision (a) provides that a priority conference shall be set upon the filing of a declaration of readiness requesting a priority conference that shows that the applicant is represented by an attorney and that the issues in dispute include employment and/or injury arising out of and in the course of employment.

Proposed subdivision (b) provides that upon a showing of good cause, a workers' compensation administrative law judge may continue the matter to a status

conference. At each priority or status conference, the parties shall be prepared to set the matter for trial or to provide a plan to complete discovery.

Proposed subdivision (c) provides that to the extent possible, all priority and status conferences in a case shall be conducted by the same workers' compensation administrative law judge. When discovery is complete, or when the workers' compensation administrative law judge determines that the parties have had sufficient time to complete reasonable discovery, the case shall be set for trial as expeditiously as possible.

Proposed Section 10256 Setting the Case.

Proposed subdivision (a) provides that a presiding workers' compensation administrative law judge or a workers' compensation administrative law judge, using sound discretion, may on his or her own motion set any case for hearing.

Proposed subdivision (b) provides that the parties are expected to submit for decision all matters properly in issue at a single trial and to produce all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense. However, a workers' compensation administrative law judge may order that the issues in a case be bifurcated and tried separately upon a showing of good cause.

Proposed Section 10260 Assignment of Consolidated Cases.

Proposed subdivision (a) provides that any request or petition to consolidate cases that are assigned to different workers' compensation administrative law judges in the same district office, or that have not been assigned but are venued at the same district office, shall be referred to the presiding workers' compensation administrative law judge of that office, whether the cases involve the same injured worker or multiple injured workers.

Proposed subdivision (b) provides that any request or petition to consolidate cases involving the same injured worker that are assigned to workers' compensation administrative law judges at different district offices, or that have not been assigned but are venued at different district offices, shall first be referred to the presiding workers' compensation administrative law judges of the district offices to which the cases are assigned. If the presiding workers' compensation administrative law judges are unable to agree on where the cases will be assigned for hearing, the conflict shall be resolved by the court administrator upon referral by one of the presiding judges.

Proposed subdivision (c) provides that any request or petition to consolidate cases involving multiple injured workers that are assigned to workers' compensation administrative law judges at different district offices, or

that have not been assigned but are venued at different district offices, shall be referred to the court administrator.

Proposed subdivision (d) provides that in resolving any request or petition to consolidate cases that are assigned to workers' compensation administrative law judges at different district offices, or that have not been assigned but are venued at different district offices, the court administrator shall set the request or petition for a conference regarding the place of hearing. At or after the conference, the court administrator shall determine the place of hearing and may determine the workers' compensation administrative law judge to whom the cases will be assigned, giving consideration to the factors set forth in California Code of Regulations, title 8, section 10589. In reaching any determination, the court administrator may assign a workers' compensation administrative law judge to hear any discovery motions and disputes relevant to discovery in the action and to report their findings and recommendations to the court administrator.

Proposed subdivision (e) provides that any party aggrieved by the determination of the court administrator may request proceedings pursuant to Labor Code section 5310, except that an assignment to a particular workers' compensation administrative law judge shall be challenged only in accordance with the provisions of California Code of Regulations, title 8, sections 10452 and 10453.

Proposed Section 10270 Access to and Viewing Adjudication Files.

Proposed subdivision (a) provides that a party, a lien claimant, or an attorney or other representative for a party or lien claimant may access and view specific adjudication files in which the party, lien claimant, attorney, or representative is a case participant except as provided for in section 10271.

Proposed subdivision (b) provides that except as otherwise by law or sections 10271 and 10272, any person may inspect the contents of any electronic adjudication file at any district office, whether or not the district office has venue over the case.

Proposed subdivision (c) provides that except as otherwise by law or sections 10271 and 10272, any person may inspect the contents of any paper adjudication file at the district office or office of the appeals board where the file is located during regular office hours.

Proposed subdivision (d) provides that the paper adjudication file and the records and documents contained therein may not be removed from the district office or the office of the appeals board for copying or for any other purpose.

Proposed subdivision (e) provides that copying operators must operate their equipment in the room assigned

to them and any person copying a paper adjudication file must put papers back in the file in their original order and any person viewing or copying a file must return the file in the same order and condition in which it was received.

Proposed subdivision (f) provides that a paper adjudication file shall not be sent from one office to another for inspection except for good cause by order of a workers' compensation administrative law judge or the appeals board and upon the payment of a fee required by California Code of Regulations, title 8, section 9990. At the request of a party to the case, or his or her attorney, a paper adjudication file that has been transferred to a record storage center for storage will be made available for inspection through the office from which the file was transferred. Paper adjudication files that have been transferred to a record storage center will be made available for inspection by any other person upon payment of the fee required by California Code of Regulations, title 8, section 9990.

Proposed Section 10271 Prohibitions on Document Inspection.

This proposed section provides that the following documents shall not be made available for inspection by any person:

- (1) Decisions, reports, opinions, orders, recommendations and other documents that are in the process of preparation, or, although fully prepared, have not yet been signed and filed.
- (2) Ratings that have not yet been served.
- (3) The working papers, personal notes, deliberation records, and other private notations made by a workers' compensation administrative law judge, commissioner, deputy commissioner or appeals board attorney or legal assistant in the course of hearing or deliberation relating to the case.
- (4) Any legal memorandum or analysis prepared by a workers' compensation administrative law judge, commissioner, deputy commissioner, appeals board attorney or legal assistant to assist a workers' compensation administrative law judge, deputy commissioner or commissioner in his or her deliberations concerning a case.

Proposed Section 10272 Sealing Documents.

Proposed subdivision (a) provides that the presiding workers' compensation administrative law judge or the appeals board may order sealed medical reports, medical records or other documents filed in a case containing references to or discussions of mental or emotional health of any person, sexual habits or practice, use of or addiction to alcohol or other drugs, or other matters of similar character. In a case involving an unrepresented

injured employee, the presiding workers' compensation administrative law judge or appeals board may on his, her, or its own motion seal a document or documents after compliance with subdivision (d). Within twenty court days after the order sealing documents, the presiding workers' compensation administrative law judge or the appeals board shall allow the injured worker an opportunity to object to the order.

Proposed subdivision (b)(1) provides that a party requesting that a document or documents be sealed shall file a petition for an order sealing the requested records. The petition must be accompanied by a memorandum of points and authorities and a declaration containing facts sufficient to justify the sealing.

Proposed subdivision (b)(2) provides that the party requesting that a record or records be filed under seal must lodge it with the district office under (d) when the petition is filed or with the appeals board if the matter is pending on petition for reconsideration, removal or disqualification, unless good cause exists for not lodging it. Pending the determination of the petition, the lodged records will be conditionally under seal.

Proposed subdivision (b)(3) provides that if necessary to prevent disclosure, the petition, any opposition, and any supporting documents must be filed in a public redacted version and lodged in a complete version conditionally under seal.

Proposed subdivision (b)(4) provides that if the presiding workers' compensation administrative law judge or appeals board denies the petition to seal, the clerk must return the lodged record to the submitting party and must not place it in the adjudication file.

Proposed subdivision (b)(5) provides that a document filed with the district office or appeals board shall not disclose material contained in a previously filed document that is sealed, conditionally under seal, or subject to a pending petition to seal.

Proposed subdivision (c)(1) provides that the party requesting that a record be filed under seal shall put it in a manila envelope or other appropriate container, seal the envelope or container, and lodge it with the district office or with the appeals board if the matter is pending on petition for reconsideration, removal or disqualification.

Proposed subdivision (c)(2) provides that the envelope or container lodged with the court must be labeled "CONDITIONALLY UNDER SEAL."

Proposed subdivision (c)(3) provides that the party submitting the lodged record shall affix to the envelope or container a cover sheet that:

- (A) Contains a case number and
- (B) States that the enclosed record is subject to a petition to file the record under seal.

Proposed subdivision (c)(4) provides that upon receipt of a record lodged under this rule, the district office or the appeals board shall endorse the affixed cover sheet with the date of its receipt and must retain but not file the record unless ordered to do so.

Proposed subdivision (d) provides that the presiding workers' compensation administrative law judge or the appeals board may order that a document be filed under seal or sealed only if he, she, or it expressly finds facts that establish:

- 1) There exists an overriding public interest that overcomes the right of public access to the record;
- 2) The overriding public interests supports sealing the record;
- 3) A substantial probability exists that the overriding public interest will be prejudiced if the record is not sealed;
- 4) The proposed sealing is narrowly tailored; and
- 5) No less restrictive means exists to achieve the overriding public interest.

Proposed subdivision (e)(1) provides that if an order is made that a document or documents be sealed, the order shall be filed in the record of the proceedings. The order shall set forth the facts that support the findings and direct the sealing of only those documents and pages, or if practicable, portions of those documents and pages, that contain the material that needs to be placed under seal.

Proposed subdivision (e)(2) provides that if the order directs that an entire document shall be sealed, and if the sealed document is contained in a paper adjudication file, the sealed document shall be placed in a sealed envelope, which shall be removed from the file before the file is made available for public inspection. If the sealed document is in an electronic adjudication file, the document shall be marked as sealed. No entirely sealed document in a paper file or an electronic file shall be available for public inspection.

Proposed subdivision (e)(3) provides that if the order directs that a portion or portions of a document be sealed, and if the partially sealed document is contained in a paper adjudication file, the partially sealed document shall be placed in a sealed envelope, however, a version of the document with the sealed portion redacted shall be made available for public inspection. If the sealed document is in an electronic adjudication file, a version of the document with the sealed portion redacted also shall be electronically maintained and shall be made available for public inspection.

Proposed subdivision (f) provides that sealed documents shall be made available for inspection by any party to the case or by his representative, subject to any reasonable conditions and limitations as the presiding

workers' compensation administrative law judge or the appeals board may impose.

Proposed subdivision (g) provides that sealed documents shall not otherwise be made available for public inspection except by order of a workers' compensation administrative law judge or the appeals board which shall be made only on a showing that good cause exists to permit the inspection.

Proposed Section 10273 Retention, Return and Destruction of Records and Exhibits.

Proposed subdivision (a) provides that the Division of Workers' Compensation shall retain for at least fifty years after the filing of case opening documents (i.e., the initial application for adjudication of claim or, where an application has not previously been filed, either a stipulations with request for award or a compromise and release) the following records in a adjudication file, in either electronic or paper form:

- (1) the application for adjudication of claim and any amended application;
- (2) all settlement documents;
- (3) all orders, decisions, or awards;
- (4) all medical-legal reports;
- (5) all permanent and stationary medical reports of treating physicians;
- (6) all rating instructions;
- (7) all formal ratings, summary rating determinations, and consultative ratings; and
- (8) any other documents as determined by the appeals board, the administrative director, the court administrator.

Proposed subdivision (b) provides that after five years from the date of filing of the initial application, the Division of Workers' Compensation may eliminate from the adjudication file and destroy paper or electronic correspondence and other miscellaneous material or records, including non-permanent and stationary medical reports of treating physicians, not listed in subdivision (a), above.

Proposed subdivision (c) provides that at any time, the Division of Workers' Compensation may eliminate from the adjudication file and destroy any of the following paper or electronic documents:

- (1) extra copies of pleadings, notices, findings, orders, decisions, awards and other documents; and
- (2) any documents filed in violation of section 10395.

Proposed subdivision (d) provides that following a period of fifty (50) years after the filing of the application or other case opening document, the Division of

Workers' Compensation may destroy the electronic and/or paper file in each case.

Proposed subdivision (e) provides that any party given leave, pursuant to California Code of Regulations, title 8, section 10603, subd. (a), to file any original document or other pieces of evidence shall, at the time of filing, either (1) arrange for the return of the document or evidence, at the filing party's sole expense, at the conclusion of all proceedings and appeals thereof; or (2) be deemed by not making such arrangements, to have consented to destruction, without notice, of the document or other evidence at the conclusion of all proceedings and appeals thereof.

Proposed subdivision (f) provides that stenographic reporters' notes or electronic sound recording of testimony shall be retained for a period of six (6) years after the taking of them and thereafter may be destroyed or otherwise disposed of.

Proposed Section 10275 Recording of Trial Level Proceedings.

Proposed subdivision (a) provides that for the purposes of this section, "recording" means any photographing, recording, or broadcasting of trial level proceedings using video, film, audio, any digital media or other equipment.

Proposed subdivision (b) provides that except as provided in this rule, trial level proceedings shall not be photographed, recorded, or broadcast. This rule does not prohibit the Division of Workers' Compensation from photographing or videotaping sessions for judicial education or publications and is not intended to apply to closed-circuit television broadcasts solely within the Division of Workers' Compensation or between Division of Workers' Compensation facilities if the broadcasts are controlled by the Division of Workers' Compensation and Division of Workers' Compensation personnel.

Proposed subdivision (c) provides that recording shall be permitted only on written order of the workers' compensation administrative law judge assigned to the case as provided in this subdivision. The workers' compensation administrative law judge in his or her discretion may permit, refuse, limit, or terminate recording.

(1) Any person who wishes to record a trial level proceeding shall make a written request to the presiding workers' compensation administrative law judge for permission to record the proceeding at least five business days before the proceeding commences unless good cause to shorten time is shown. The workers' compensation administrative law judge assigned to the proceeding shall rule upon the request. The district office shall promptly notify the parties that a request has been filed.

(2) The workers' compensation administrative law judge may hold a hearing on the request or rule on the request without a hearing.

(3) In ruling on the request, the workers' compensation administrative law judge shall consider the following factors:

(A) Importance of maintaining public trust and confidence in the workers' compensation system;

(B) Importance of promoting public access to the workers' compensation system;

(C) Parties' support of or opposition to the request;

(D) Nature of the case;

(E) Privacy rights of all participants in the proceeding, including witnesses;

(F) Effect on any minor who is a party, prospective witness, or other participant in the proceeding;

(G) Effect on any ongoing law enforcement activity in the case;

(H) Effect on any subsequent proceedings in the case;

(I) Effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;

(J) Effect on excluded witnesses who would have access to the televised testimony of prior witnesses;

(K) Security and dignity of the trial level proceeding;

(L) Undue administrative or financial burden to the Division of Workers' Compensation or participants;

(M) Interference with neighboring hearing rooms;

(N) Maintaining orderly conduct of the proceeding;

(O) Any other factor the workers' compensation administrative law judge deems relevant.

(4) The workers' compensation administrative law judge's ruling on the request to permit recording is not required to make findings or a statement of decision. The workers' compensation administrative law judge may condition the order permitting recording of the proceedings on the requestor's agreement to pay any increased costs incurred by the Division of Workers' Compensation resulting from recording the proceeding (for example, for additional security).

The requester shall be responsible for ensuring that any person who records the trial level proceedings on their behalf know and follow the provisions of the order and this rule.

(5) The order permitting recordation may be modified or terminated on the workers' compensation administrative law judge's own motion or upon application to the workers' compensation administrative law judge without the necessity of a prior hearing or written findings. Notice of the application and any modification or termination ordered pursuant to the application shall be given to the parties and each person permitted by the previous order to record the proceeding.

(6) The workers' compensation administrative law judge shall not permit recording of the following:

- (A) Proceedings held in chambers which are not transcribed by a hearing reporter;
- (B) Proceedings closed to the public; and
- (C) Conferences between an attorney and a client, witness, or aide, between attorneys, or between counsel and the workers' compensation administrative law judge at the bench, unless transcribed by a hearing reporter.

(7) The workers' compensation administrative law judge may require a demonstration that people and equipment comply with this rule. The workers' compensation administrative law judge may specify the placement of equipment to minimize disruption of the proceedings.

(8) The following rules shall apply to all recording:

- (A) One video recording device and one still photographer shall be permitted.
- (B) The equipment used shall not produce distracting sound or light. Signal lights or devices to show when equipment is operating shall not be visible.
- (C) Microphones and wiring shall be unobtrusively located in places approved by the workers' compensation administrative law judge and shall be operated by one person.
- (D) Operators shall not move equipment or enter or leave the courtroom while the proceeding is in session, or otherwise cause a distraction.
- (E) Equipment or clothing shall not bear the insignia or marking of a media agency.

(9) If two or more people request recordation of a proceeding, they shall file a statement of agreed arrangements. If they are unable to agree, the workers' compensation administrative law judge may deny a request to record the proceeding.

Proposed subdivision (d) provides that any violation of this rule or an order made under this rule is an unlawful interference with the proceedings may be the basis for an order terminating recording, a citation for contempt, or an order imposing monetary or other sanctions as provided by law.

Proposed subdivision (e) provides that notwithstanding (a) through (d), a workers' compensation administrative law judge may permit inconspicuous personal recording devices to be used by parties in a courtroom to make sound recordings as personal notes of the proceedings. A person proposing to use a recording device shall obtain advance permission from the workers' compensation administrative law judge before recording the proceeding. The recording shall not be used for any purpose other than as personal notes, and shall not constitute evidence as to any matter recorded. The right of any individual to use a personal recording device shall be suspended if, in the workers' compensation administrative law judge's sole discretion, it appears that (1) the continued recording of the proceedings will inhibit any party or witness from participation in the proceeding; or (2) the recording is done in a manner that threatens to disrupt the proceeding.

Proposed Section 10280 Walk-Through Documents.

Proposed subdivision (a) provides that "walk-through" document is a document that is presented to a workers' compensation administrative law judge for immediate action. Notwithstanding the provisions of section 10250 (relating to the filing of declarations of readiness) and section 10544 (relating to notices of hearing), the following provisions shall govern walk-through documents.

Proposed subdivision (b) provides that each district office will have a designee of the presiding workers' compensation administrative law judge available to assign walk-through cases from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. on court days.

Proposed subdivision (c) provides that the following documents may be submitted on a walk-through basis: (1) Compromise and releases; (2) Stipulations with request for award; (3) Petitions for attorney's fees for representation of the applicant in vocational rehabilitation; (4) Petitions for attorney's fees for representation of the applicant at a deposition; and (5) Petitions to compel attendance at a medical examination or deposition.

Proposed subdivision (d) provides that the following procedures shall be followed for filing walk-through documents:

(1) A walk-through settlement document (i.e., a compromise and release or a stipulations with request for award), and all supporting medical reports and other supporting documents not previously filed, shall be filed directly with the workers' compensation administrative law judge at the date and time of the walk-through. The party presenting the walk-through settlement shall use the appropriate form, cover sheet, and document separator sheet. Permanent and stationary medical or medical-legal reports shall be indicated as such. In addition, each walk-through settlement document (i.e., a compromise and release or a stipulations with request for award) shall be accompanied by a proof of service showing that the settlement document was served on all other parties to the settlement, on any defendant not executing the settlement who may be liable for the payment of additional compensation, and on all lien claimants whose liens have not been resolved.

(A) A case opening settlement document being submitted for a walk-through shall be submitted no later than noon (12:00 p.m.) of the court day before any action on the walk-through, and shall be designated as a walk-through document. All documents in support of the settlement document shall be submitted at the walk-through with the assigned judge.

(2) A walk-through petition (i.e., a petition for vocational rehabilitation attorney's fees, a petition for deposition attorney's fees, or a petition to compel attendance at a medical examination or deposition) and all other documents relating to the walk-through petition, including any supporting documentation shall be filed directly with the workers' compensation administrative law judge at the date and time of the walk-through. The party presenting the walk-through petition shall use the appropriate form, cover sheet, and document separator. In addition, at the date and time of the walk-through, the party filing the walk-through petition shall file a proof of service directly to the workers' compensation administrative law judge, as follows:

(A) For a petition for attorney's fees for representation of the applicant in vocational rehabilitation, a proof of service showing service on the injured worker and the defendant alleged to be liable for paying the fees.

(B) For a petition for attorney's fees for representation of the applicant at a deposition, a proof service showing service on the injured worker and the defendant alleged to be liable for paying the fees.

(C) For a petition to compel attendance at a medical examination or deposition, a proof of service showing service on the injured worker, the injured worker's attorney, and all defendants.

Proposed subdivision (e) provides that when appearing for the walk-through proceeding, the party filing the walk-through document shall appear before the district office staff person designated by the presiding workers' compensation administrative law judge to assign the walk-through document to a workers' compensation administrative law judge. The filing party shall then appear before the assigned judge. If the assigned judge is unavailable for any reason, the filing party shall then proceed to the presiding workers' compensation administrative law judge for possible reassignment to another judge.

Proposed subdivision (f) provides that a workers' compensation administrative law judge who is presented with a walk-through settlement document shall approve it, disapprove it, suspend action on it, or accept it for later review and action. If a workers' compensation administrative law judge is presented with so many walk-through settlement documents that review of them will interfere with the cases scheduled before him or her for hearing, the judge may refer the walk-through settlement to the presiding judge for possible reassignment to another judge.

Proposed subdivision (g) provides that a walk-through document may be acted on only by a workers' compensation administrative law judge at the district office that has venue. If an injured worker has existing cases at two or more district offices that have venue, a walk-through document may be filed at any office having venue over an existing case that is a subject of the walk-through document. An existing case is a case that has been filed and assigned a case number prior to the filing of the walk-through document.

Proposed subdivision (h) provides that a walk-through document may be acted on by any workers' compensation administrative law judge except as follows:

(1) If a judge has taken testimony, any walk-through document in that case must be acted on by the judge who took testimony if that judge works at the district office to which the case is assigned, unless the presiding judge allows it to be acted on by another judge.

(2) If a judge has reviewed a document and declined to approve it, a walk-through document in that case must be acted on by the same judge, if that judge works at the district office to which the case is assigned, unless the presiding judge allows it to be acted on by another judge.

Proposed subdivision (i) provides that a workers' compensation judge who is presented with a walk-through petition for attorney's fees or petition to compel attendance shall issue an order in compliance with section 10349.

Proposed Section 10281 Emergency Petitions for Stay.

Proposed subdivision (a) provides that a party may present to the presiding workers' compensation administrative law judge of the district office having venue a petition to stay an action by another party pending a hearing.

Proposed subdivision (b) provides that each district office will have a designee of the presiding workers' compensation administrative law judge available to assign petitions for stay from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. on court days.

Proposed subdivision (c) provides that a party who walks through a petition to stay an action shall provide notice to the opposing party or parties no later than 10:00 a.m. of the immediately preceding court day. This notice shall: (1) state with specificity the nature of the relief to be requested by the petition to stay; and (2) state the date, time, and place that the petition to stay will be presented. A copy of the petition to stay shall be attached to the notice. The notice shall be given by either fax or e-mail. If notice by fax or e-mail fails, or if an opposing party's fax number or e-mail address are unknown, notice shall be given in the manner best calculated to expeditiously and timely advise the opposing party of the information set forth in subdivisions (c)(1) and (c)(2), including notice by phone or by overnight mail or delivery service. First-class mail shall not be utilized for notice of a petition to stay an action.

Proposed subdivision (d) provides that a petition to stay an action shall be accompanied by a declaration regarding notice stating under penalty of perjury: (1) the notice given, including the date, time, manner, and name of the party informed; (2) the relief sought; and (3) whether opposition is expected. In addition, if the petitioner was unable to give timely notice to the opposing party, the declaration under penalty of perjury also shall state that the petitioner in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party.

Proposed subdivision (e) provides that upon the receipt of a proper petition to stay an action, the presiding workers' compensation or his or her designee shall, in

his or her discretion, either: (1) deny the petition; (2) grant a temporary stay and set the petition for a formal hearing; or (3) set the petition for a formal hearing, without either denying the petition or granting a temporary stay.

Proposed Section 10290 Petition Appealing Order Granting or Denying Petition for Order Requiring Employee to Select Employer-Designated Physician.

Proposed subdivision (a) provides that upon receipt of a timely petition appealing a decision granting or denying a change of primary treating petition, pursuant to California Code of Regulations, title 8, section 9786, subd. (e)(2) or (e)(3), the matter shall be referred to a workers' compensation administrative law judge for hearing and determination of the issues raised. The petition shall be accompanied by a copy of the administrative director's order, a declaration of readiness, an application for adjudication if one has not been previously filed, and any other documents deemed relevant that have not been previously filed. A party aggrieved by the determination of the workers' compensation administrative law judge may seek relief therefrom within the same time and in the same manner specified for petitions for reconsideration.

Proposed subdivision (b) provides that any party aggrieved by an order issued by a workers' compensation administrative law judge pursuant to a referral under California Code of Regulations, title 8, section 9786, subd. (e)(4), of the rules of the administrative director may petition the appeals board for relief therefrom within twenty (20) days from the date of the issuance of the order in the same manner specified for petitions for reconsideration.

Proposed Section 10291 Petition Appealing Notice of Compensation Due.

Proposed subdivision (a) provides that the petition appealing notice of compensation due shall be served on the injured worker or dependent and on the audit unit, concurrently with its filing.

Proposed subdivision (b) provides that the petition appealing notice of compensation due shall specify the factual and legal basis for the petition and shall include the audit unit's file number. The petition appealing notice of compensation due shall be accompanied by a copy of the notice of compensation due, a declaration of readiness, an application for adjudication if one has not been previously filed, and any other documents deemed relevant.

Proposed subdivision (c) provides that if an application for adjudication has not been previously filed, ven-

ue shall be designated and determined in accordance with Labor Code section 5501.5 and California Code of Regulations, title 8, section 10409. If an application for adjudication has been previously filed, the petition appealing notice of compensation due shall be filed at the district office having venue and the case number assigned to the application for adjudication shall be assigned to the petition.

Proposed subdivision (d) provides that an appeal of notice of compensation due shall be set for a hearing before a workers' compensation administrative law judge within forty-five (45) days of filing unless the employee's claim is already before a workers' compensation administrative law judge on other substantive issues in which case the appeal may be considered with these other issues. The audit unit, insurer, self-insured employer or third party administrator and the injured worker shall receive notice of the hearing and copies of subsequent notices of orders issued in the case. Following the hearing, the workers' compensation administrative law judge shall issue findings of fact and an order affirming, modifying or rescinding the notice of compensation due, which complies with Labor Code section 5313.

Proposed subdivision (e) provides that the copy of the appeal of notice of compensation due sent to the injured worker shall inform the injured worker of the right to consult an attorney. If the injured worker is represented by an attorney, the workers' compensation administrative law judge may determine the amount of attorney fees reasonably incurred in resisting the appeal of notice of compensation due and may assess reasonable attorney fees as a cost upon the employer filing the appeal of notice of compensation due in accordance with Labor Code section 129(c).

Proposed Section 10293 Petition Appealing Order of the Rehabilitation Unit.

Proposed subdivision (a) provides that appeals from decisions of the rehabilitation unit of the Division of Workers' Compensation shall be commenced as follows:

- (1) if an application for adjudication is already on file, by filing and serving a declaration of readiness and a petition setting forth the reason for the appeal;
- (2) if no application for adjudication is on file, by filing and serving an application for adjudication, a declaration of readiness, and a petition setting forth the reason for the appeal.

Proposed subdivision (b) provides that the party appealing the rehabilitation unit decision and the party opposing the appeal shall file and serve any documents

that the parties deems relevant that have not already been filed in the rehabilitation unit case file.

Proposed subdivision (c) provides that if an application for adjudication has not been previously filed, venue shall be designated and determined in accordance with Labor Code section 5501.5 and California Code of Regulations, title 8, section 10409. If an application for adjudication has been previously filed, the petition appealing a decision of the rehabilitation unit shall be filed at the district office having venue and the case number assigned to the application for adjudication shall be assigned to the petition.

Proposed subdivision (d) provides that a petition appealing a decision of the rehabilitation unit shall be filed within twenty (20) days from the date of the issuance of the rehabilitation unit decision.

Proposed Section 10294 Petition Appealing Determination of a Return to Work Reimbursement.

Proposed subdivision (a) provides that an eligible employer may appeal the administrative director's notice under section 10119, subd. (i)(1) and (2), by filing a "Petition Appealing Administrative Director's Reimbursement Allowance," setting forth the basis of the appeal. The petition shall be filed within twenty (20) days from the date of the issuance of the administrative director's notice.

Proposed subdivision (b) provides that if an application for adjudication has been previously filed, the petition appealing the administrative director's notice shall be filed at the district office having venue and the case number assigned to the application for adjudication shall be assigned to the petition. If an application for adjudication has not been previously filed, an application shall be filed together with the petition, and venue shall be designated and determined in accordance with Labor Code section 5501.5 and California Code of Regulations, title 8, section 10409.

Proposed subdivision (c) provides that a "Petition Appealing Administrative Director's Reimbursement Allowance" shall be accompanied by a declaration of readiness.

Proposed subdivision (d) provides that a copy of the petition shall be concurrently served on the administrative director.

Proposed Section 10294.5 Petition Appealing Determination Regarding Supplemental Job Displacement Benefits.

Proposed subdivision (a) provides that either party may appeal the determination and order of the adminis-

trative director issued under California Code of Regulations, title 8, section 10133.54 by filing a petition together with a declaration of readiness to proceed pursuant to section 10250 within twenty calendar days of the issuance of the decision or within twenty days after a request is deemed denied pursuant to California Code of Regulations, title 8, section 10133.54, subd. (f), except that the time for filing shall be extended in accordance with California Code of Regulations, title 8, sections 10507 and 10508. The petition shall set forth the specific factual and legal basis for the appeal.

Proposed subdivision (b) provides that if an application for adjudication has been previously filed, the petition appealing the administrative director's notice shall be filed at the district office having venue and the case number assigned to the application for adjudication shall be assigned to the petition. If an application for adjudication has not been previously filed, an application shall be filed together with the petition, and venue shall be designated and determined in accordance with Labor Code section 5501.5 and California Code of Regulations, title 8, section 10409.

Proposed subdivision (c) provides that a copy of the petition shall be concurrently served on the administrative director.

Proposed Section 10295 Mandatory Arbitration.

Proposed subdivision (a) provides that this rule applies to injuries occurring on or after January 1, 1990.

Proposed subdivision (b) provides that any application for adjudication that lists one or more disputes involving an issue set forth in Labor Code section 5275, subd. (a), shall be accompanied by an arbitration submittal form. The arbitration submittal form shall indicate that either:

- (1) an arbitrator has been selected pursuant to Labor Code section 5271, subd. (a), or
- (2) an unsuccessful attempt has been made to select an arbitrator and the presiding workers' compensation administrative law judge is requested pursuant to Labor Code section 5271, subd. (b), to assign a panel of five arbitrators.

Proposed subdivision (c) provides that if the parties have agreed to an arbitrator pursuant to Labor Code section 5271, subd. (c), the presiding workers' compensation administrative law judge shall, within six (6) days of receipt of the arbitration submittal form, order the issue or issues in dispute submitted for arbitration pursuant to Labor Code sections 5272, 5273, 5276 and 5277.

Proposed subdivision (d) provides that if the arbitration submittal form requests a panel pursuant to Labor Code section 5271, subd. (b), the presiding workers' compensation administrative law judge shall, within six (6) days of receipt of the arbitration submittal form,

serve on each of the parties an identical list of five arbitrators selected at random pursuant to Labor Code 5271, subd. (b). For each party in excess of one party in the capacity of employer and one party in the capacity of injured employee or lien claimant, the presiding workers' compensation administrative law judge shall randomly select two additional arbitrators to add to the panel in accordance with the selection process set forth in Labor Code section 5271, subd. (c). Each of the parties shall strike two arbitrators from the list and return it to the presiding workers' compensation administrative law judge within six (6) days after service. Failure to timely return the list shall constitute a waiver of a party's right to participate in the selection process. If one arbitrator remains, the presiding workers' compensation administrative law judge shall, within six (6) days of return of the lists from the parties, order the issue or issues submitted for arbitration before the selected arbitrator pursuant to Labor Code sections 5272, 5273, 5276 and 5277. If more than one arbitrator remains on the panel, the presiding workers' compensation administrative law judge shall randomly select an arbitrator from the remaining panelists.

Proposed subdivision (e) provides that if the parties to the dispute have stricken all the arbitrators from the panel, the presiding workers' compensation administrative law judge shall, within six (6) days of receipt of the last of the returned lists, serve on each of the parties to the dispute a new list of five arbitrators and any additional arbitrators required by Labor Code section 5271, subd. (c), selected at random but excluding the names of the arbitrators on the prior list. Each of the parties to the dispute shall again strike two arbitrators from the list and return it to the presiding workers' compensation administrative law judge within six (6) days after service. This procedure shall continue until one or more arbitrators remain on the lists returned to the presiding workers' compensation administrative law judge.

Proposed subdivision (f) provides that the parties shall provide all necessary materials to the arbitrator. Any paper file shall remain in the custody of the district office.

Proposed subdivision (g) provides that a copy of any final decision, order or award from the arbitrator, together with a copy of the record developed as set forth in Labor Code sections 5276 and 5277, shall be filed with the presiding workers' compensation administrative law judge of the district office having venue. The district office shall scan the copies of the arbitrator's decision, order or award and record into the EAMS adjudication file and, after scanning, shall destroy the copies.

Proposed Section 10296 Voluntary Arbitration.

Proposed subdivision (a) provides that at any time, the parties may agree to submit any issue for arbitration pursuant to Labor Code section 5275, subdivision (b), by submitting an arbitration submittal form that indicates that the parties have selected an arbitrator pursuant to Labor Code section 5271, subdivision (a), and by filing an application for adjudication if one has not been previously filed.

Proposed subdivision (b) provides that within six (6) days of receipt of the arbitration submittal form, the presiding workers' compensation administrative law judge shall order the issues in dispute submitted for arbitration pursuant to Labor Code sections 5272, 5273, 5276 and 5277.

Proposed subdivision (c) provides that if the parties are unable to agree to an arbitrator under Labor Code section 5271, subdivision (a), the parties may agree to follow the procedures for selecting an arbitrator under Labor Code section 5271, subdivisions (b) and (c), as set forth in section 10295.

Proposed subdivision (d) provides that the parties shall provide all necessary materials to the arbitrator.

Proposed subdivision (e) provides that a copy of any final decision, order or award from the arbitrator, together with a copy of the record developed as set forth in Labor Code sections 5276 and 5277, shall be filed with the presiding workers' compensation administrative law judge of the district office having venue. The district office shall scan the copies of the arbitrator's decision, order or award and the record into the EAMS adjudication file and, after scanning, shall destroy the copies.

Proposed Section 10297 Arbitration Submittal form.

This proposed section is the mandatory arbitration submittal form.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Court Administrator has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The only entities subject to these administrative penalties are those who have knowingly and unreasonably delayed or refused compensation to injured workers with a frequency indicating a general business practice.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing

businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.

- Effect on Housing Costs: None.
- Cost impacts on representative private persons or business: The proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. The only entities subject to these administrative penalties are those who have knowingly and unreasonably delayed or refused compensation to injured workers with a frequency indicating a general business practice.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations will not affect small businesses. The businesses that are subject to these regulations are insurers, self-insured employers (who must by regulation have substantial net worth and income) and third party administrators, all of whom do not qualify as "small business."

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: The proposed regulations may impose costs on State agencies. (State government accounts for about 3% of the occupational injuries and illnesses.) Any such costs are, however, are non-reimbursable since the requirement on an employer to comply with California's workers' compensation laws is not unique to State agencies and applies to all employers alike, public and private. All penalties collected must be deposited into the Workers' Compensation Return-to-Work Fund established pursuant to Labor Code § 139.48, to promote the early and sustained return to work of employees following work-related injuries or illnesses. The proposed regulations will not affect any federal funding.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See "Local Mandate" section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See "Local Mandate" section above.)

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code § 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment through the Division's Internet message board (the DWC Forums).

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations, pre-rulemaking comments, and the Form 399. Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations — Rulemaking" link and scroll down the list of rulemaking proceedings to find the current "Rules of the Court Administrator" rulemaking link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file.

The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

BACKUP CONTACT/PERSON CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact persons:

Destie Overpeck (doverpeck@dir.ca.gov)
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the backup contact person is (510) 286-7100.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: www.dir.ca.gov

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, commencing with section 10210.

**TITLE 8. OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

**NOTICE OF PUBLIC MEETING/PUBLIC
HEARING/BUSINESS MEETING OF THE
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD AND NOTICE OF
PROPOSED CHANGES TO TITLE 8 OF THE
CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **July 17, 2008**, at 10:00 a.m.
in the Costa Mesa City Council
Chambers,
77 Fair Drive, Costa Mesa,
California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **July 17, 2008**, following the
Public Meeting,
in the Costa Mesa City Council
Chambers,
77 Fair Drive, Costa Mesa,
California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupa-

tional safety and health standards in Title 8 of the California Code of Regulations.

**BUSINESS
MEETING:**

On **July 17, 2008**, following the
Public Hearing,
in the Costa Mesa City Council
Chambers,
77 Fair Drive, Costa Mesa,
California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND
HEALTH STANDARDS BOARD**

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **July 17, 2008**.

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 7,
 Article 3
 Section 3248
 Mechanical Refrigeration
2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 7,
 Article 98
 Section 4999
 Properly Rigged (Handling Loads)

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 7,
 Article 3
 Section 3248
 Mechanical Refrigeration

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking was initiated as a result of Petition File No. 490, which was granted by the Occupational Safety and Health Standards Board (Board) on April 19, 2007. Labor Code Section 142.2 allows interested persons to propose new safety orders or revisions of existing safety orders. David W. Smith, the author of the petition that is the subject of Petition File No. 490, expressed concern that Uniform Mechanical Code (UMC) standards incorporated by reference into Section 3248(a), regarding mechanical refrigeration systems, are no longer readily available to the regulated public. He suggested that the provisions of those national consensus standards be printed in Title 8. He also stated that references to other national consensus standards in Section 3248(b) should be omitted absent a strong reason for retaining them. This proposal would eliminate outdated UMC references in Section 3248 and would harmonize Section 3248 with the California Mechanical Code (CMC).

Section 3248 sets forth requirements for the design, installation, testing and maintenance of mechanical refrigeration systems. Subsection (a) presently requires that installations placed in service prior to March 13, 1999 comply with portions of the 1982 UMC, and subsection (b) requires that installations placed in service on or after March 13, 1999 comply with portions of the 1997 UMC. The 1982 UMC is old and copies are hard to find, and the 1997 UMC will have ever greater obsolescence as time passes.

This proposal would delete both existing subsections (a) and (b) and thereby eliminate the problem of outdated references. Instead, pursuant to new subsection (a), the benchmark standard would be the current CMC. An exception would allow mechanical refrigeration systems to remain in service if those systems were designed, installed, tested and maintained in accordance with the CMC in effect at the time of installation, so long as the system does not pose a hazard. In any event, pursuant to new subsection (b), modifications of all mechanical refrigeration systems must be made in accordance with the CMC in effect at the time of modification. The proposal promotes safety, makes mechanical refrigeration systems subject to versions of the CMC that actually govern the system at key times (installation and modification), and eliminates references to ever-less-relevant and obtainable versions of the UMC.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commenc-

ing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers — state, local and private — will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7,
Article 98
Section 4999
Properly Rigged (Handling Loads)

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This staff-initiated rulemaking proposal is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision in the Matter of Modern Stainless Design, Inc., Docket Nos. 01-R1D5-3834 and 3835. The employer was cited by the Division of Occupational Safety and Health (Division) for failing to properly rig a 4,320 pound steel tank suspended by 4 overhead cranes. The load released suddenly, dropped and came in contact with an employee who was aligning tank sections and seriously injured him. The Division alleged the tank had been “improperly and unsafely rigged.” OSHAB hearing testimony indicates employer difficulty in discerning when a load has been properly rigged. The Appeals Board Decision (Decision) also states that the Division had created an interpretation of Section 4999(b)(1) that is stricter than what is contained in the text of that section imposing several rigging requirements not contained in the cited safety order. The Decision indicated that the employer had not trained the employee who was injured in rigging procedures and could not produce any training records.

Board staff believes that to prevent accidents like the one described above, Section 4999 must be very clear about requiring that loads be rigged only by persons trained and competent to do so. In the absence of specific training or competency requirements, the proposal requires a qualified person, as defined in the General Industry Safety Orders (GISO),¹ to be trained to safely perform rigging operations. Board staff notes there are national consensus standards that address this issue such as the American National Standards Institute (ANSI) A10.42-2000, Safety Requirements for Rigging Qualifications and Responsibilities — American National Standard for Construction and Demolition Operations that provide employer guidance.

This proposed rulemaking action also includes non-substantive revisions such as editorial, grammatical, and re-formatting. These non-substantive revisions are not all discussed in this informative digest but are clearly indicated in the regulatory text in underline and

¹ A “qualified person, attendant, or operator” is defined in the GISO as an employer-designated person who by reason of his/her training and experience has demonstrated the ability to safely perform duties and where required, is licensed in accordance with federal, state, or local laws and regulations.

strikeout format. In addition to these non-substantive revisions, the following actions are proposed:

Section 4999. Handling Loads.

This section prohibits cranes, derricks or hoists from being loaded beyond their rated capacity and addresses the responsibility of qualified persons to determine the magnitude of the load, except for cases where the crane or derrick is equipped with a load weighing device. This section also prohibits crane operators from lifting loads of unknown weight unless a qualified person informs the operator of the weight prior to the lift. Section 4999 also addresses procedures for attaching the load, pre-lift procedures, procedures during the hoisting process, side loading, releasing and holding loads, preventing inadvertent contact of employees by the moving parts of cranes and lifting loads using a truck crane.

A new subsection (a) is proposed that requires the qualified person (rigger) to be trained and capable of safely rigging loads and that loads are to be rigged by a qualified person (rigger) or a trainee under the supervision of a qualified person (rigger).

The proposed amendments will clarify to the employer that within the context of Section 4999 that the term “qualified person” is referring to the “rigger” and that the qualified person (rigger) or trainee under a qualified person’s (rigger’s) supervision are the only persons who can rig loads and that they must be specifically trained and be able of conducting rigging operations safely.

Amendments are proposed to re-numbered subsection (b) to include the term “(rigger)” after the phrase “qualified person” in two different locations in subsection (b). The proposed amendments clarify that the term “qualified person” is a “rigger”. This proposal will be consistent with language proposed in new subsection (a) and specifies that the rigger is a person who by virtue of training is capable of safely performing rigging operations.

Amendments are proposed to re-numbered subsection (c)(1) to delete the term “properly” and to specify that when required by GISO, Section 5002, the hook latch or gate be in the closed position to prevent hook displacement. These proposed amendments will eliminate vague and ambiguous terminology to improve clarity and to ensure that the load is handled securely when being lifted.

An informative “NOTE” is proposed to follow re-numbered subsection (c)(1) to clarify that there are rigging requirements discussed in the Construction Safety Orders, Section 1710, that pertain to the erection of structures and that signaling requirements are located in Section 5001.

Re-numbered subsection (c)(2) requires slings to be free of kinks or twists. An additional provision is pro-

posed to follow the existing requirement which refers the employer to the sling requirements in Article 101 to further ensure rigging devices such as slings are used properly and are effective in securing the load.

Re-numbered subsection (d) is proposed to include new subsection (d)(4) to prohibit the practice of side loading crane booms with the exception of what is permitted in re-numbered subsection (g). This proposal will allow side loading only as permitted in re-numbered subsection (g) to reduce the possibility the load could become unstable and come in contact with persons on the ground resulting in serious injury or fatality.

Amendments are proposed to re-numbered subsection (h) pertaining to loads from being released or detached from a crane. The proposed amendments would specify that the load shall not be released or detached from the crane unless a qualified person (rigger) indicates that it is safe to do so. The proposed amendments clarify that the term “person” must be a “qualified person (rigger)” which will ensure that only trained, and therefore, competent employees will handle and rig loads safely to ensure load handling and employee safety.

All of the foregoing proposed amendments add to the clarity of the standard and enhance employee safety.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All employers — state, local and private — will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/ UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274–5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than July 11, 2008. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on July 17, 2008, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274–5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board’s rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274–5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 15. BOARD OF PAROLE HEARINGS

NOTICE OF PROPOSED RULEMAKING

TITLE 15. Crime Prevention and Corrections DIVISION 2. Board of Parole Hearings (Formerly known as Board of Prison Terms) CHAPTER 5. Parole Supervision ARTICLE 1. Length and Conditions of Parole

Amendment of Sections 2510, 2511, 2512 and 2513

NOTICE IS HEREBY GIVEN that the Board of Parole Hearings (board) proposes to amend California Code of Regulations (CCR), title 15, sections 2510, 2511, 2512 and 2513. These four regulations establish the language for the general conditions of parole as well as criteria for the construction of special conditions of parole. These regulations implement portions of the *Armstrong v. Schwarzenegger* (2002) USDC-ND (No. C-94-2307-CW) (*Armstrong*) and *Valdivia v. Schwarzenegger* (2003) USDC-ED (No. C-94-0671-LK) (*Valdivia*) court orders that require review of the parole process and reform to make the regulations easily understandable to the directly affected public — prisoners and parolees who might have a disability, including a learning disability.

AUTHORITY AND REFERENCE

Government Code section 12838.4 and Penal Code sections 3052 and 5076.2 authorize the board to adopt the proposed regulations. The proposed regulations implement, interpret and make specific *Morrissey v. Brewer*, 408 U.S. 471 (1972), Health and Safety Code section 11590, Penal Code sections 186.22, 290, 457.1, 3000, 3052, 3053, 3053.2, 3053.5, 3056, 3057, 3060, 3060.5, 3068, 12020, and *Armstrong* and *Valdivia*.

PUBLIC HEARING

The board has not scheduled a public hearing on this proposed regulatory action. However, the board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her autho-

rized representative, no later than 15 days before the close of the written comment period.

The purpose of a public hearing is to receive oral comments about the proposed regulation. It is not a forum to debate the proposed regulation. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period have the same significance and influence as oral comments presented at a public hearing. The board members will not be present at the public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulation to the board. **THE WRITTEN COMMENT PERIOD ON THIS PROPOSED REGULATORY ACTION WILL COMMENCE ON MAY 30, 2008 AND WILL CLOSE AT 5:00 P.M. ON JULY 14, 2008.** In order for the comments to be considered by the board, they must be submitted in writing (by mail, fax or e-mail) to the board's Contact Person identified in this Notice no later than the close of the comment period.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The federal courts in *Armstrong v. Schwarzenegger* (*Armstrong II*), United States District Court, Northern District of California, Case No. C94-2307 CW (*Armstrong*), and *Valdivia v. Schwarzenegger*; United States District Court, Eastern District of California, Case No. CIV S94-0671 LKK GGH (*Valdivia*) issued orders that the board develop and implement policies and procedures that accommodate and effectively communicate with prisoners and parolees (including prisoners and parolees with disabilities) at all parole proceedings, including parole revocation proceedings. Notice of the conditions of parole is the first step in the parole process that might lead to parole revocation proceedings.

Regulation section 2510 as amended establishes a general requirement that the prisoner shall be informed of the length and conditions of his/her parole. Section 2510 also provides several definitions that are key to understanding this regulation.

Regulation Section 2511 as amended explains the purpose of the notice of parole and the conditions of parole. While the notice of parole provides a description of the rules and regulations governing parolees, the conditions of parole are the actual rules that govern the parolee. The conditions governing parolees are expressed clearly and effectively so that an optimum num-

ber of parolees can reasonably be expected to understand them. Additionally regulation 2511, implements equal access in the form of reasonable accommodation for inmates/parolees with disabilities (e.g. help communicating the conditions of parole for hearing or sight impaired inmates/parolees).

Regulation section 2512 as amended lays out the exact language of the general conditions of parole that are to apply to all parolees. The general conditions include a prohibition on all criminal conduct, reporting requirements to the parole agent including compulsory adherence to the parole agent's instructions, submission to extensive search rights by the parole agent or peace officer, travel restrictions, requirement that the parolee inform the parole agent of residence and employment situation and restrictions on weapons possession.

Regulation section 2513 as amended lays out the exact language of some of the special conditions that may be put into effect as part of a parolee's conditions of parole. If any special conditions are imposed on a prison term it will be in addition to the mandatory set of general conditions delineated in section 2512. Special conditions can include restrictions on association with gangs, requirements to attend a mental health program, prohibition on contact with the victim or victim's family, where warranted by the crime prohibition on contact with a person under 18, restrictions on living location or circulation of the parolee e.g prohibition on being near schools or parks where children congregate. Other restrictions through the imposition of special conditions include, curfews and prohibition on the use of alcohol and/or drugs.

On November 7, 2006, voters passed Proposition 83 (Jessica's Law). This new law places additional restrictions on parolees convicted of certain sex offenses. These restrictions with respect to certain sex offenders (e.g. restriction on living near schools or parks) are included in the array of special conditions featured in 2513.

DISCLOSURES REGARDING THE PROPOSED ACTION

Local Mandates: The board has determined that the proposed action imposes no mandate upon local agencies or school districts.

Fiscal Impact Statement: The board has made the following initial determinations:

- Cost to any local agency or school district which must be reimbursed in accordance with

Government Code §§ 17500 through 17630:
None

- Cost or savings to any state agency: **None**
- Other non-discretionary cost or savings imposed on local agencies: **None**
- Cost or savings in federal funding to the state: **None**

Significant Statewide Adverse Economic Impact on Business: The board has determined that there is no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Effects on Job and/or Business Creation, Elimination or Expansion: The board has determined that adoption of this regulation will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing business within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on Housing Costs: The board has made an initial determination that the proposed action will have no significant effect on housing costs.

Small Business Determination: The board has determined that the proposed regulation does not have a significant adverse economic impact on small business because small businesses are not affected by the internal management of State prisons.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested parties are accordingly invited to present statements or arguments with respect to any alternatives to the proposed changes during the public comment period.

CONTACT PERSON

Please direct requests for copies of the Initial Statement of Reasons, the proposed amended text of the regulation, or other information upon which the rulemaking is based to:

Anthony Vessigault, Regulations Coordinator
Board of Parole Hearings
PO Box 4036
Sacramento, CA 95812-4036
Telephone: (916) 323-0944
Facsimile: (916) 324-3859
E-mail: Anthony.Vessigault@cdcr.ca.gov

In any such inquiries, please identify the action by using the board's regulation control number RN 08-02.

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above: Devaney Sullivan at (916) 322-6815 or Devaney.Sullivan@cdcr.ca.gov.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The board will make the rulemaking file available to the public throughout the rulemaking process at its offices located at 1515 K Street, Suite 600, Sacramento, California. As of the date this Notice is published in the Office of Administrative Law's Notice Register, the rulemaking file consists of this Notice, Form 400 (Notice of Submission of Regulations), the proposed text of the regulation, Initial Statement of Reasons and Form 399 (Fiscal Impact Statement). Copies of these documents may be obtained by contacting the board's Contact Person at the address or phone number listed above or by visiting the board's Web site at:

http://www.cdcr.ca.gov/Divisions_Boards/BOPH/reg_revisions.html

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the board may adopt the proposed regulations substantially as described in this Notice. If the board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the board adopts the regulations as revised. Please send requests for copies of any modified regulation text to the attention of the Contact Person identified in this Notice or by visiting the board's Web site at http://www.cdcr.ca.gov/Divisions_Boards/BOPH/reg_revisions.html. The board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained from the board's Regulation Coordinator or by visiting the board's Web site at:

http://www.cdcr.ca.gov/Divisions_Boards/BOPH/reg_revisions.html

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

CALIFORNIA DEPARTMENT OF FISH AND GAME CONSISTENCY DETERMINATION Fish and Game Code Section 2080.1 CESA Tracking No. 2080-2008-005-01

PROJECT: Clear Creek Wastewater Treatment Plant, Sacramento River Mile 288.8
LOCATION: Sacramento River, tributary to the Pacific Ocean, in the County of Shasta.
NOTIFIER: Jonathan Oldham, City of Redding

BACKGROUND

The City of Redding ("City") proposes to expand and upgrade the Clear Creek Wastewater Treatment Plant ("CCWTP") at river mile 288.8 on the Sacramento River, near the City of Redding, in Shasta County (hereinafter, the "Project"). The purpose of the expansion and upgrade of the CCWTP is to improve existing facilities and replace existing equipment to accommodate anticipated growth in the Redding area as outlined in the 2000-2020 Redding General Plan. The City also expects construction of the Project to reduce the potential for overflow of untreated or partially treated wastewater into the Sacramento River during severe storm events.

The Project will increase the average dry weather flow capacity from 8.8 to 9.4 million gallons per day and the peak wet-weather flow capacity from 16.2 to 40 million gallons per day. This expansion in capacity will be accomplished through eight sub-phases to be completed by 2012. Only sub-phase 4 requires instream work and has the potential to affect listed anadromous fish. Details of sub-phase 4 are described in this determination. Details of the other sub-phases may be found in the biological assessment for the Project and California Environmental Quality Act documents (State Clearinghouse No. 20070142119).

The total Project impact within the Sacramento River is approximately 0.581 acres, including 0.551 acres of temporary impact during placement of the work trestle that will allow construction equipment access and 0.033 acres of permanent impact for all construction activities. In order to facilitate construction of the Project, during sub-phase 4 the City will construct two 42-inch diffuser pipes in the channel bed. The dry weather flow diffuser pipe will extend 250 feet out into the Sacramento River perpendicular to the flow, with 18 diffuser ports on risers that will extend from the riverbed into the main river flow. The second wet weather diffuser port will extend up to 100 feet into the river and will be located 100 feet downstream of the dry weather flow diffuser port.

The Project proposes open trench construction to install both the wet and dry weather diffusers within the channel bed. A trench will be excavated to approximately 10 feet deep for each of the 42-inch diffusers. Trench length will be approximately 250 feet for the dry weather diffuser and 100 feet for the wet weather diffuser. After the diffusers are installed such that the crown of the diffuser is five feet below the channel bed they will be secured to steel H-piles and backfilled with either excavated alluvial material or washed river gravels.

Installation of both structures will include the movement, use, and temporary storage of large equipment within the river channel. A temporary trestle will be installed using diesel hammer driven H-pile supports to allow equipment to work above the channel. The temporary trestle will be approximately 30 feet wide and 300 feet long. The width of the Sacramento River at the project location is approximately 575 feet wide and the trestle will not be continuous across the river, allowing for passage for fish and boats.

Construction of the Project will occur in habitat that is known to support Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) and Central Valley spring-run Chinook salmon (*O. tshawytscha*)(collectively, "Chinook salmon"), and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service ("NMFS") has determined that work in this area may result in direct and indirect impacts to these species and their habitat. Winter-run Chinook salmon is listed as endangered under both the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*) and the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*), and Central Valley spring-run Chinook salmon is listed as threatened under the ESA and CESA. Potential construction-related impacts that may result in take of Chinook salmon include exposure of migrating and spawning adults, incubating eggs, and rearing juveniles of the listed salmonids species to noise and high sound

pressure associated with pile-driving in the river channel; increased turbidity; bank erosion stemming from construction activities; suspended sediments that may adversely affect all life stages of listed fish; temporal disturbance of shaded riverine habitat; loss of potential spawning habitat; potential spill of hazardous materials into the Sacramento River; and impaired fish passage due to the trestle installation in the immediate vicinity of the in-water construction site.

Because the project has the potential to take species listed under the ESA, the U.S. Army Corps of Engineers consulted with the NMFS pursuant to section 7 of the ESA. On March 26, 2008, NMFS issued a "no jeopardy" Biological Opinion (2007/05277)("BO") and incidental take statement ("ITS") for the Project which describes the project actions and sets forth measures to mitigate impacts to Chinook salmon and temporary adverse impacts to spawning and rearing habitat in the area of the Project. While the location of the construction activities is not considered suitable spawning habitat due to its substrate composition, spawning has been documented within approximately 200 to 300 feet of the construction site. Additionally, this section of the Sacramento River functions as a migration corridor for both Sacramento River winter-run Chinook salmon and Central Valley spring-run Chinook salmon, as well as other salmonids. This area is also a corridor for juvenile outmigrants and serves as rearing habitat for juveniles.

On April 16, 2008, the Director of the Department of Fish and Game ("DFG") received correspondence from Mr. Jonathan Oldham, on behalf of the City of Redding, requesting a determination pursuant to Section 2080.1 of the Fish and Game Code that the BO, including its ITS, is consistent with CESA. The BO for the project describes both construction activities and the long-term operation and maintenance of the CCWTP. However the actions taken under the long-term operation and maintenance are not likely to result in incidental take of Chinook salmon and therefore, operations and maintenance is not addressed in this determination.

DETERMINATION

DFG has determined that the BO, including its ITS, is consistent with CESA for this Project because the mitigation measures therein meet the conditions set forth in Fish and Game Code Section 2081, subparagraphs (b) and (c), for authorizing the incidental take of CESA-listed species. Specifically, DFG finds that the take of Chinook salmon will be incidental to an otherwise lawful activity (i.e., the rehabilitation and expansion of an existing wastewater treatment plant), the measures identified in the BO and those required by the ITS will minimize and fully mitigate the impacts of the autho-

rized take, and implementation of the Project will not jeopardize the continued existence of the species. Additionally, construction of the Project will reduce the potential for overflow of untreated or partially treated wastewater into the Sacramento River during severe storm events, resulting in better water quality for Chinook salmon. The measures in the BO include, but are not limited to, the following:

1. Upstream Turbidity Control:

- To control turbidity during the construction process the City will install a “supersak” barrier approximately 1,100–feet upstream of the in–river work zone, and if required a sheetpile wall immediately upstream of the work area to create a quiescent pool to control turbidity. A downstream turbidity barrier may be installed downstream if downstream turbidity sampling identifies exceedance of Central Valley Regional Water Quality Control Board (“RWQCB”) basinwide standards.
- The City will install the supersaks in a non–invasive manner (i.e., by using a helicopter or barge)
- The City may work in the river channel at flow rates up to 10,000 cubic feet per second (cfs). At flows greater than 10,000 cfs the supersaks must be removed. If sheet pile is used the contractor must remove one half of the full sheet pile wall. At flows between 10,000 and 20,000 cfs, the phased sheet pile options (up to 50% of the work flow area) are acceptable construction techniques as described in the river modeling technical memorandum (North State Resources, 2007). At flows greater than 20,000 cfs, the contractor will remove all sheet piles and supersaks from the river.

2. Downstream Turbidity Control:

- A downstream turbidity barrier is not required for the Project unless downstream turbidity levels exceed permitted levels specified by the RWQCB. At that point the City will be required to install downstream turbidity control measures or otherwise modify operations to achieve water quality compliance criteria. Construction activities will not be allowed to entrap fish in the work zone. If the entire work area is enclosed a fish rescue will be performed. A reasonable opening in the downstream turbidity control barrier must be maintained at all times to allow fish to move out of the work area.

3. Turbidity Monitoring:

- Turbidity will be monitored any time that in–river work is occurring. Once the City begins to excavate the river bottom, upstream turbidity will

be monitored and recorded once daily to provide background level. Upstream turbidity may be monitored by a standard grab sample taken from the riverbank. Downstream turbidity will be monitored and recorded every hour. Downstream monitoring will be performed at the following locations

- A. Monitoring Point #1: Located downstream of the new dry weather diffuser, sampled 100 feet from the right bank.
- B. Monitoring Point #2: Located 1000 feet downstream of the new dry weather diffuser sampled 150 feet from the right bank.

- Downstream turbidity samples from both locations will be averaged over a 24–hour period and the average turbidity level will be compared with the upstream grab sample data. Data from monitoring point #2 will be compared to the background turbidity to determine the turbidity increase. Turbidity caused by in–river work will be maintained below permitted levels specified by the RWQCB.
- The City will comply with the turbidity monitoring and control requirements in the RWQCB permit.

4. Hazardous Materials:

- Any construction equipment that would come in contact with the Sacramento River will be inspected daily for leaks prior to entering the flowing channel. External oil, grease, and mud will be removed from equipment using steam cleaning. Untreated wash and rinse water must be adequately treated prior to discharge.
- Spill containment booms will be maintained at all times during construction operations and/or staging of equipment or fuel supplies. Fueling trucks will maintain a spill containment boom at all times as well.

5. Chinook Salmon Avoidance:

- In–water work will be restricted to the period between October 1 and April 15.
- All work will be conducted during daylight hours, defined as one half hour before sunrise to one half hour after sunset as published in the local newspaper.
- Equipment shall be operated slowly and deliberately to alert and scare adult and juvenile fish away from the work area.
- The City will instruct the Contractor that before submerging the excavator bucket, suction dredge cutting head, or placing gravel below the water surface, the excavator bucket or dredge be operated to “tap” the surface of the water.

- To avoid impacts to mobile life stages of salmonids that may be present in the water column when backfilling the diffuser pipeline trench, clean gravel fill materials shall be added slowly and deliberately to allow fish to move from the work area.
- Construction site best management practices (“BMP”) to control soil erosion and stormwater sediment runoff will be employed during construction season when rainfall is likely to occur. The Contractor will be required to develop a turbidity control plan that will describe the methods to be used to control turbidity in compliance with RWQCB permit requirements.

6. Spawning Habitat Mitigation:

- Any new or previously excavated gravel material placed in the Sacramento River channel shall meet the Caltrans Gravel Cleanliness specification #85.
- Clean, washed spawning gravel will be imported to backfill over the diffuser, or the gravel previously removed during excavation may be washed and cleaned and used to backfill the excavation.
- After construction is completed, the supersak barrier will be dismantled, and its contents (washed river gravels) will remain in-river as fish spawning substrate to be distributed by normal high river flow events.

7. Shaded Riverine Aquatic Habitat (“SRA”) Mitigation:

- Temporary disturbance or loss of SRA habitat will be planted at a ratio of 2:1 (new plantings per woody riparian plant destroyed) to compensate for habitat temporarily lost.

8. Pile Driving Impact Mitigation Measures:

- All driven piles shall be located and constructed so that, wherever feasible, piles can be left in place and reused if necessary in subsequent stages of the construction process.
- The work window for pile driving and other in-water work shall be restricted to the period from October 15 through April 15. However; in-water work (including pile driving) may begin as early as October 1, provided that a qualified fisheries biologist confirms through weekly surveys commencing on September 1, that no Chinook salmon redds have been created within 150 yards of the pile driving areas within 30 days of the commencement of the work.

- In order to reduce pile driving effects and improve spawning habitat within and downstream of the action area, the Corps shall require the City to employ the use of supersaks to create the flow barrier upstream from the diffuser alignment rather than installing sheet-piles. However if it can be shown that the use of supersaks or similar technology is infeasible or ineffective in producing the appropriate conditions within the work area, with prior written approval from NMFS, sheet piles may be used to construct or reinforce the flow barrier. In any event, the City shall ensure that the contents of the supersaks are delivered to the stream upon completion of construction, as required by the BO and measure 6 of this determination.

- The City shall conduct acoustic monitoring within the water column and the substrate of the Sacramento River to determine the range and magnitude of compression shock waves generated by pile driving operations in the action area. While noise levels are not expected to exceed 204 dB and the number of Chinook salmon potentially in the area is expected to be minimal, acoustic monitoring must be designed to detect if, and at what range, pile driving activities generate noise levels found to be lethal to juvenile salmonids (204 dB).

9. Fish Passage:

- Deck platform materials will be placed at a sufficient level to clear the maximum anticipated river flows during construction.
- The temporary work bridge/trestle will not be continuous across the river. The flow channel northeast of the island will always remain unobstructed to allow safe passage of fish and boating traffic.

10. Project Operations And Reporting:

- The Corps or the City shall provide NMFS with a project summary and compliance report to NMFS within 60 days of completion of the Project. This report shall describe construction dates, implementation of project conservation measures, compliance monitoring and compliance with the terms and conditions of the BO; observed or other known effects on listed fish, if any; and any occurrences of incidental take of Chinook salmon.
- The Corps or the City shall provide NMFS with a detailed operations and maintenance plan for the long term operation of the Clear Creek Wastewater Treatment Plant within one year of completion of the proposed action.

- The Corps or the City shall notify NMFS upon initiation of in-water construction.

Based on this consistency determination, the City does not need to obtain authorization from DFG under CESA for take of Sacramento River winter-run and Central Valley spring-run Chinook salmon that occurs in carrying out the Project, provided the City implements the Project as described in the BO, (including the Conservation Measures), and complies with the mitigation measures and other conditions described in the BO and ITS. However, if the Project as described in the BO, including the mitigation measures therein, changes, or if NMFS amends or replaces the BO, the City will need to obtain from DFG a new consistency determination (in accordance with Fish and Game Code Section 2080.1) or an incidental take permit (in accordance with Fish and Game Code Section 2081).

DEPARTMENT OF FISH AND GAME

CALIFORNIA DEPARTMENT OF FISH AND GAME CONSISTENCY DETERMINATION Fish and Game Code Section 2080.1 Tracking Number 2080-2008-003-01

PROJECT: Mad River Bridges Replacement Project on US Highway 101
LOCATION: Post miles 89.2 to 90.4 in Humboldt County
NOTIFIER: California Department of Transportation (Caltrans), District 1, Eureka

BACKGROUND

Caltrans is proposing to replace the Mad River Bridges on US Highway 101 near McKinleyville, California from Post Mile (PM) 89.2 to PM 90.4 (the Project). The existing northbound and southbound bridges were constructed in 1929 and 1958, respectively. Caltrans considers both bridges to be structurally deficient because neither meets current scour (erosion of pier footings), seismic, or geomorphic guidelines. Both bridges are proposed to be replaced with bridges that provide room for two 12-foot lanes, a 5-foot inside shoulder, and a 10-foot outside shoulder. The northbound bridge would also have an 8-foot-wide multi-purpose pathway. Modifications to the southbound Central Avenue on-ramp, the northbound off-ramp, and the Route 200/North Bank Road intersection will also be necessary. The project is scheduled to be completed over four construction seasons and is estimated to start in 2009.

The proposed Project has the potential to result in incidental take of the Southern Oregon-Northern California Coast Evolutionary Significant Unit (ESU) coho salmon (*Oncorhynchus kisutch*) (SONCC coho salmon). SONCC coho salmon is listed as a threatened species under both the federal Endangered Species Act (ESA) (16 U.S.C. §1531 *et seq.*) and the California Endangered Species Act (CESA) (Fish & G. Code, §2050 *et seq.*). Incidental take of juvenile SONCC coho salmon may occur during 1) diversion/dewatering and percussive pile driving activities necessary for construction of new bridge piers, 2) fish removal and relocation activities and the construction/maintenance of a temporary Fish Exclusion Zone (FEZ) during construction, 3) demolition of the old bridges, including removal of old piers and footings, and 4) mitigation activities such as off-site passage improvement projects and the on-site replacement of a new scour pool structure. Project activities also have the potential to contribute sediment and petroleum-based products into the river which may have deleterious effects on SONCC coho salmon.

Because the Project has the potential to take a species listed under ESA the Federal Highway Administration (FHWA) initially consulted with the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) regarding incidental take of federally listed salmonids associated with the project beginning in 2003. NMFS issued a biological opinion (BO) and Incidental Take Statement (ITS) (151422SWR02AR9371:DF) to the FHWA for the project on February 2, 2005, and in June 2005, the Department of Fish and Game (DFG) issued a determination to Caltrans, pursuant to Section 2080.1 of the Fish and Game Code, that the ITS was consistent with CESA (Ref. #2080-2005-014-01)(Consistency Determination).

Subsequent to the issuance of the February 2005 federal ITS and June 2005 Consistency Determination, Caltrans, acting on behalf of the FHWA pursuant to the *Memorandum of Understanding between FHWA and Caltrans Concerning the State of California's Participation in the Surface Transportation Project Delivery Pilot Program*, reinitiated consultation with NMFS in 2007 to address changes in the Project, including 1) the need to install cofferdams instead of water bladders for dewatering areas of pier construction and removal, 2) addition of an access road to the river, and 3) refueling of difficult-to-move equipment on gravel bars in the river channel. In addition to analyzing these Project changes, NMFS required an analysis of potential effects on listed species associated with underwater sound pressures generated from percussive pile driving near the channel. Caltrans submitted a revised biological assessment to NMFS on January 28, 2008. On April 11, 2008, NMFS issued a BO and ITS

(151422SWR2008AR00035) for the revised project that replaced the February 2005 BO and ITS. On April 15, 2008, the Director of DFG received a notice from the Caltrans District 1 Office in Eureka requesting a determination that the April 2008 BO, including its ITS, is consistent with CESA.

DETERMINATION

DFG has determined that the BO (151422SWR2008AR00035), including its ITS, is consistent with CESA because the project and mitigation measures described meet the conditions set forth in Fish and Game Code Section 2081(b) and (c) for authorization of incidental take of CESA-listed species. Specifically, DFG finds that the take of SONCC coho salmon will be incidental to an otherwise lawful activity (replacement of existing highway bridges); the mitigation measures identified in the BO and required by the ITS will minimize and fully mitigate the impacts of the authorized take of SONCC coho salmon; and the project will not jeopardize the continued existence of the species. The mitigation measures in the BO include, but are not limited to, the following:

- 1) Terms and conditions to minimize the take of listed salmonids from fish relocation activities:
 - a) Caltrans shall develop a "Channel Diversion and Fish Relocation Plan" prior to the start of such activities. This plan shall describe channel diversion construction design methods and fish relocation methods.
 - b) Caltrans shall conduct electrofishing according to the "NOAA Fisheries Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act," June 2000.
 - c) Caltrans shall provide notification one week prior to relocation and pile driving activities in order to provide an opportunity for staff to observe the activities and provide recommendations for further reducing take.
 - d) Caltrans shall keep all captured salmonids in cool, shaded, aerated water protected from excessive noise, jostling, or overcrowding, unless immediately released following capture. To minimize predation issues, young-of-the-year salmonids shall be segregated from older salmonids and other potential aquatic predators. Captured salmonids shall be relocated, as soon as possible, to suitable habitat at least 300 meters downstream of the project area.
- e) Pumps used in areas that may hold fish shall be equipped with screens that meet the following NMFS/DFG fish screening criteria:
 - i) Perforated plate: screen openings shall not exceed 3/32 inches (2.38 mm), measured in diameter.
 - ii) Woven wire: screen openings shall not exceed 3/32 inches (2.38 mm), measured diagonally.
 - iii) Screen material shall provide a minimum of 27% open area.
 - iv) Approach velocity shall not exceed 0.33 feet per second.
- 2) Terms and conditions to minimize the take of listed salmonids from pile driving activities:
 - a) Pile driving of the thirteen 2.2-meter diameter piles (including pier 2 piles) shall occur only during daylight hours from one hour after sunrise to one hour before sunset, to ensure that pile driving does not occur at dawn or dusk, during peak migration and feeding times.
 - b) Caltrans shall monitor underwater sound during all impact hammer pile driving activities on land or in water for the thirteen 2.2-meter diameter piles (including pier 2 piles). Notification must be provided within 24 hours if underwater sound produced during five or more strikes on a single day exceeds the anticipated level of 205 dB_{peak} at 10 meters from the pile being installed (or the closest feasible location for piers 2 and 4).
 - c) The FEZ migration channel shall be opened for fish migration during any period where pile driving is not expected to occur for 96 hours or more.
- 3) Terms and conditions to monitor the level of take and the effectiveness of incidental take minimization measures:
 - a) Caltrans shall provide an annual report by January 31 of each year. The report shall include the following:
 - i) The number of Chinook salmon, SONCC coho salmon, and steelhead (identified to species) killed during relocation activities.
 - ii) The underwater sound produced from each strike and the number of strikes when each of the thirteen 2.2-meter diameter piles is driven.
 - b) Caltrans shall allow agency staff access to the project work areas during the construction

- period, in order to observe activities, evaluate fish and stream conditions, collect samples of any dead fish, or carry out other investigations. Agency staff shall contact the Resident Engineer prior to entering the construction area.
- 4) Mitigation-related activities: Caltrans proposes to fully mitigate the take of SONCC coho salmon by removing barriers or otherwise improving adult and juvenile fish passage on Mill (Watek), Hall, and Lindsay Creeks, all tributaries to the Mad River upstream of the project. A draft mitigation and monitoring plan outlining the details of the project mitigation shall be submitted to NMFS and DFG for approval prior to construction, and construction shall not proceed until the final mitigation and monitoring plan is approved. The following activities are proposed at these sites:
- Mill/Watek Creek: Caltrans proposes to replace culverts where Riverside Road crosses Mill creek with an embedded box culvert. The new culvert will be designed to meet NMFS and DFG stream crossing criteria.
 - Hall Creek: Caltrans proposes to remove gunite and rock slope protection, re-grade the channel and place grade control structures on Hall Creek from the SR 299 Bridge crossing to the confluence with the Mad River, a distance of approximately 100 meters. Channel restoration techniques will follow the guidelines outlined in the *California Salmonid Stream Habitat Restoration Manual*.
 - Lindsay Creek: Caltrans proposes to remove gunite and rock slope protection, and regrade the channel at the SR 299 overpass crossing of Lindsay Creek, approximately 1,000 meters above the confluence with the Mad River. After removal of RSP and gunite, the channel banks will be stabilized using a combination of native vegetation, large boulders, cobbles and logs. Bank stabilization techniques will follow the guidelines in the *California Salmonid Stream Habitat Restoration Manual*.
 - In addition to the off-site passage improvement projects, Caltrans will construct a log and boulder scour feature on-site prior to September 15 of the first year following the completion of pile driving activities. A minimum of three logs at least 25 feet long and at least 24-inch diameter at breast height with attached root wads shall be

used. Caltrans will monitor the performance of the scour hole for three years following construction.

- Measures to ensure adequate funding:
 - Caltrans has programmed \$1,701,180 in its Expenditure Authorization for the Project for fisheries related mitigation monitoring during and after construction.
 - Caltrans has programmed \$800,000 in its Expenditure Authorization for the Project for implementing mitigation measures for SONCC coho salmon.

Based on this consistency determination, Caltrans does not need to obtain authorization from DFG under CESA for take of SONCC coho salmon that occurs in carrying out the Project, provided Caltrans implements the Project as described in the BO (including the Conservation Measures), and complies with the mitigation measures and other conditions described in the BO and ITS. However, if the Project as described in the BO, including the mitigation measures therein, changes, or if NMFS amends or replaces the BO, Caltrans will need to obtain from DFG a new consistency determination (in accordance with Fish and Game Code section 2080.1) or an incidental take permit (in accordance with Fish and Game Code section 2081). This Consistency Determination replaces and supersedes the prior Consistency Determination #2080-2005-014-01 for the Project that was issued by DFG in June 2005.

DEPARTMENT OF FISH AND GAME

CALIFORNIA DEPARTMENT OF FISH AND GAME CONSISTENCY DETERMINATION Fish and Game Code Section 2080.1 Tracking No. 2080-2008-004-02

PROJECT: PG&E Colusa Generating Station
Project
LOCATION: Colusa County
NOTIFIER: URS Corporation
APPLICANT: Pacific Gas and Electric Company
(PG&E)

BACKGROUND

The proposed PG&E Colusa Generating Station Project (Project) is located adjacent to Delevan Road, approximately 4 miles west of Interstate 5, 14 miles north of the farming community of Williams, and 72 miles north of Sacramento, in Colusa County. PG&E proposes to construct and commission a nominal 660-megawatt combined-cycle power plant on 31

acres of a 100-acre site and perform associated upgrades to bridges and transmission lines. The proposed Project site is located 2,000 feet west of the Tehama-Colusa Canal and 3,000 feet to the east of the Glenn-Colusa Canal and is expected to take 24 months to complete.

The proposed Project occurs in habitat that is suitable for giant garter snake (*Thamnophis gigas*)(GGs), and the U.S. Fish and Wildlife Service (Service) has determined that work in this area may result in direct and indirect impacts to this species and its habitat. Construction of the Project will result in permanent impacts to 1.184 acres of GGs habitat, of which 0.684 are aquatic and 0.500 acres are upland. An additional 2.70 acres of GGs habitat, of which 1.83 acres are aquatic and 0.87 are upland, will be temporarily affected for one season between May 1 and October 1.

Because of the Project's potential for take of the federally threatened GGs, the U.S. Army Corps of Engineers consulted with the Service, as required by the Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). On March 14, 2008, the Service issued a letter (Service file No. 81420-2008-F-0836-1) appending the proposed Project to its earlier *Programmatic Formal Consultation for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Glenn, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter and Yolo Counties, California* (Service file No. 1-1-F-97-149)(Programmatic BO). The append letter also describes Project actions and requires PG&E to comply with terms of the Programmatic BO as well as additional measures in the append letter. Because GGs is also listed as a threatened species pursuant to the California Endangered Species Act (CESA) (Fish and Game Code § 2050 et seq.), on April 16, 2008, the URS Corporation, on behalf of PG&E, notified the Director of the Department of Fish and Game (DFG) that PG&E was requesting a determination, pursuant to Fish and Game Code section 2080.1, that the March 14, 2008 Programmatic BO, including its incidental take statement (ITS) is consistent with CESA for purposes of the proposed Project.

DETERMINATION

DFG has determined that the Programmatic BO, including the ITS, is consistent with CESA as to the proposed construction and commission of the Colusa Generating Station because the mitigation measures contained in the Programmatic BO and ITS, as well as the conditions in the append letter, meet the conditions set forth in Fish and Game Code section 2081, subpara-

graphs (b) and (c), for authorizing the incidental take of CESA-listed species. Specifically, DFG finds that take of GGs will be incidental to an otherwise lawful activity (i.e., construction of the power plant), the mitigation measures identified in the Programmatic BO, ITS, and append letter will minimize and fully mitigate the impacts of the authorized take, and construction of the Project will not jeopardize the continued existence of GGs. The mitigation measures in the Programmatic BO, ITS, and append letter include, but are not limited to, the following:

- 1) PG&E shall implement avoidance and minimization measures, articulated as "Conservation Measures" in the append letter, which include:
 - a) All construction activity associated with the Teresa Creek Bridge replacement, the Glenn-Colusa Canal Bridge replacement, the PG&E access road alignment, and placement of gravel along the east side of the Delevan Road/McDermott Road intersection shall be conducted between May 1 and October 1. This is the active period for the GGs and direct impacts are lessened because GGs are actively moving and avoiding danger during this timeframe;
 - b) Any dewatered habitat must remain dry for at least 15 consecutive days after April 15 and prior to excavating or filling the dewatered habitat;
 - c) All construction personnel shall participate in a Service-approved worker environmental awareness program. Workers would be informed about the presence of the GGs and that unlawful take of the animal or destruction of its habitat is a violation of ESA. A qualified biologist shall instruct the construction personnel about the life history of the GGs, the importance of irrigation canals, wetlands and seasonally flooded areas such as rice fields, to the GGs and the terms and conditions of any agreement reached with the Service; and
 - d) Exclusion fencing shall be installed along the margins of temporary disturbance areas within GGs aquatic or terrestrial habitat.
- 2) PG&E shall provide compensation for temporary impacts in accordance with the requirements in the Programmatic BO for Level 1 mitigation as follows:
 - a) restore the temporary impacts of 2.70 acres of habitat for the GGs to pre-project conditions

within the same season or, at most, the same calendar year.

- 3) PG&E shall provide compensation for permanent impacts in accordance with the requirements in the Programmatic BO for Level 3 mitigation as follows:
 - a) PG&E shall provide the required 3.552 acres (2.052 acres of aquatic and 1.500 acres of upland) of GGS habitat through purchase of mitigation bank credits at a Service and DFG-approved mitigation bank prior to the start of Project construction activities.
 - b) If credits at an approved mitigation bank are not available within one year of the date of permit issuance, PG&E may proceed with ground- or vegetation-disturbing Project activities before fully performing all of its habitat acquisition duties and funding obligations by providing financial assurances in the form of a letter of credit acceptable to DFG and the Service in the amount of \$259,840.00 based on the following:
 - i) \$45,000 per acre for the purchase of 3.552 acres of offsite aquatic and upland habitat and \$100,000 for onsite restoration, revegetation and monitoring of temporary disturbance areas. The letter of credit funding includes the cost of creating, monitoring and maintaining the marsh habitat.

Pursuant to Fish and Game Code section 2080.1, incidental take authorization under CESA will not be required for incidental take of GGS for the Project, provided PG&E implements the Project as described in the append letter and complies with the mitigation measures and other conditions described in the Programmatic BO. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the append letter or the Programmatic BO, PG&E will be required to obtain a new consistency determination or a CESA incidental take permit from DFG. This determination is limited to consistency of the Programmatic BO as applied specifically to the subject Project, and does not cover other activities that might be appended to the Programmatic BO in the future. Separate determination(s) or take authorization(s) must be obtained for future activities that may result in take of CESA-listed species.

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

**California Environmental Protection Agency
Office of Environmental Health
Hazard Assessment
Notice to Interested Parties
May 30, 2008**

ANNOUNCEMENT OF PUBLIC COMMENT PERIOD

Draft Technical Support Documents On Proposed Public Health Goals for Styrene and oxamyl in Drinking Water

The Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is announcing the availability of the draft technical support documents for proposed Public Health Goals (PHGs) for styrene and oxamyl in drinking water. The draft document on styrene is a new risk assessment, while the draft document on oxamyl is an update of an existing PHG for this chemical. The draft documents are posted on the OEHHA Web site (www.oehha.ca.gov). OEHHA is soliciting comments on the draft reports during a 45-day comment period. The Office will also hold a public workshop on July 15, 2008, at the Elihu Harris Building, 1515 Clay Street, Oakland, 94612, Room 10, 10 a.m.–12 noon, or until business is concluded. OEHHA follows the requirements set forth in Health and Safety Code Sections 57003(a) and 116365 for conducting the workshop and receiving public input.

The workshop is provided to encourage a dialogue between OEHHA scientists and the public, to discuss the scientific basis of the proposed PHGs, and to receive comments. Following the workshop, OEHHA will evaluate all the comments received, revise the documents as appropriate, and make them available for another 30-day comment period. After any subsequent revisions, the final documents will be posted on our Web site along with responses to the major comments from the public at the workshop and during the public review and scientific comment periods.

Oral and written comments received at the workshop will be considered during the revision of the draft technical support documents. Written comments must be received at the OEHHA address below by 5:00 p.m. on July 15, 2008, to be considered during this revision period for the documents.

The PHG technical support documents provide information on the health effects of contaminants in drinking water. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe Drinking Water Act of 1996 (Health and Safety Code Section 116365), requires OEHHA to develop PHGs based exclusively on public health considerations. PHGs published by OEHHA will be considered by the California Department of Health Services in setting drinking water standards (Maximum Contaminant Levels, or MCLs).

If you would like to receive further information on this announcement or have questions, please contact our office at (510) 622-3170 or the address below.

Mr. Michael Baes (mbaes@oehha.ca.gov)
Pesticide and Environmental Toxicology Branch
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
1515 Clay St., 16th floor
Oakland, California 94612

Attention: PHG Project

DECISION NOT TO PROCEED

BOARD OF PHARMACY

NOTICE OF DECISION NOT TO PROCEED WITH RULEMAKING ACTION

The California State Board of Pharmacy has decided not to proceed with its rulemaking action described in the Notice published in the California Regulatory Notice Register on November 16, 2007, OAL File # Z07-1106-04, concerning Title 16, section(s) repeal of sections 1716.1 and 1716.2, adoption of sections 1735-1735.8 and amendment to sections 1751-1751.8, relating to requirements for pharmacies that compound medications.

OAL REGULATORY DETERMINATION

OFFICE OF ADMINISTRATIVE LAW

DETERMINATION OF ALLEGED UNDERGROUND REGULATIONS

(Pursuant to Government Code
Section 11340.5 and
Title 1, section 270, of the
California Code of Regulations)

DEPARTMENT OF PERSONNEL ADMINISTRATION

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

2008 OAL DETERMINATION NO. 6
(OAL FILE # CTU 2007-1113-01)

REQUESTED BY: Shelley Alarid
CONCERNING: Department Of Personnel
Administration — Personnel
Management Liaison
Memorandum 2005-024 (PML
2005-024) — Six Month
Limitation of Retroactive
Dental Premium
Reimbursements.

DETERMINATION ISSUED PURSUANT TO GOVERNMENT CODE SECTION 11340.5.

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of a "regulation" as defined in Government Code section 11342.600¹ and is

¹ Government Code 11342.600:

"Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

subject to the Administrative Procedure Act (APA). If a rule meets the definition of a “regulation,” but was not adopted pursuant to the APA and should have been, it is an “underground regulation” as defined in California Code of Regulations, title 1, section 250.² OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

ISSUE

On November 13, 2007, Ms. Alarid submitted a petition to OAL challenging rules issued in a memorandum by the California Department of Personnel Administration (Department) as underground regulations issued in violation of Government Code section 11340.5.³ The alleged underground regulations are contained in Personnel Management Liaison Memorandum 2005–024 (PML 2005–024), issued by the Department’s Benefits Division, addressed to “Personnel Officers, Personnel Transaction Supervisors and Personnel Transactions Staff.” The subject of PML 2005–024 is “Six Month Limitation of Retroactive Dental Premium Reimbursements.”

DETERMINATION

OAL determines that PML 2005–024 meets the definition of a “regulation” as defined in section 11342.600 and that it should have been adopted pursuant to the APA.

FACTUAL BACKGROUND

PML 2005–024 was issued on August 9, 2005. It is attached to this determination as Attachment #1. It states, in part:

Effective January 1, 2006, retroactive premiums for mandatory cancellations and/or deletions to employees’ dental coverage will be reimbursed for a maximum period of six months.

Ms. Alarid states that the Department has denied her request for reimbursement of retroactive dental benefits

she paid after her son was no longer eligible for coverage in July 2005, until September 2007 based upon enforcement of PML 2005–024. Because of the enforcement of PML 2005–024, Ms. Alarid has been limited to six months of reimbursement only.

In its response to the petition, the Department asserts that: (1) PML 2005–024 is exempt from the rulemaking requirements of the APA; (2) the Department was not acting in a quasi–legislative manner when it issued PML 2005–024; and (3) state employees were given ample notice of the change, and therefore, all safeguards associated with the APA have been met.

Ms. Alarid did not provide a rebuttal to the Department’s response.

UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits a state agency from issuing a rule unless the rule complies with the APA. It states as follows:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation as defined in title 1, California Code of Regulations, section 250.

OAL may issue a determination as to whether or not an agency issues, utilizes, enforces, or attempts to enforce a rule that meets the definition of a “regulation” as defined in section 11342.600 and should have been adopted pursuant to the APA. An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to “due deference” in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244.

² An underground regulation is defined in title 1, California Code of Regulations, section 250:

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

³ Unless otherwise specified code references are to the California Government Code.

ANALYSIS

A determination of whether the challenged rule is a “regulation” subject to the APA depends on (1) whether the challenged rule contains a “regulation” within the meaning of section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571, the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code, § 11342, subd. (g)).

The first element of a regulation is whether the rule applies generally. PML 2005–024 states that all California state employees will only be able to recover a maximum of six months of retroactive dental premiums paid for state–sponsored dental coverage. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. PML 2005–024 applies to such a clearly defined class of persons: employees of the state of California with state–sponsored dental coverage. The first element is, therefore, met.

The second *Tidewater* element is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure. Government Code sections 22950–22959 is the State Employees’ Dental Care Act. Government Code section 22953, subdivision (a), provides that:

The state, through the Department of Personnel Administration. . . may contract, upon negotiations with employee organizations, with carriers for dental care plans for employees, annuitants, and eligible family members. . . .

Government Code section 22959 states:

The Department of Personnel Administration shall administer the benefits provided by this part for civil service employees and annuitants. . . .

The Department’s rule in PML 2005–024, allowing reimbursement for only six months of retroactive premiums for state–sponsored dental coverage, directly affects “. . . the benefits provided by this part [State Employee Dental Care Act] for civil service employees and annuitants. . . .” (Gov. Code, sec. 22959.) This rule has a direct impact on state employees with state–sponsored dental coverage by establishing a maximum period of reimbursement of dental premiums. Thus, PML 2005–024 implements, interprets, or makes specific section 22959. The second element in *Tidewater* is met; therefore, OAL concludes the challenged rule in PML 2005–024 meets the definition of “regulation.”

The final issue to examine in determining if the Department has created an underground regulation by issuing PML 2005–024 is whether PML 2005–024 falls within an exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies.⁴ Exemptions may also be specific to a particular rulemaking agency or a specific program.⁵ Pursuant to section 11346, the rulemaking procedures required by the APA “shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly.” We find no exemptions from the APA that would apply to PML 2005–024, and do not agree with the Department’s assertion that it is exempt. Our reasons for not agreeing with the Department’s argument follow.

1. Department Asserts PML 2005–024 is Exempt

The Department asserts that PML 2005–024 is exempt from the rulemaking requirements of the APA pursuant to section 11340.9(c).⁶ Section 11340.9(c) provides an exemption to the APA for instructions relating to the use of a form prescribed by a state agency. The Department cites *Stoneham v. Rushen* (1982) 137 Cal.App.3d 729, as holding that

. . . [the administrative bulletins used for] the implementation of a new standardized scoring system to achieve inmate classifications, formally

⁴ See Government Code section 11340.9.

⁵ For example, Penal Code section 5058.1 that exempts pilot programs within prisons and Education Code section 89030 that exempts rules and regulations adopted by California State University trustees from compliance with the APA.

⁶ 11340.9(c) states that the APA does not apply to the following: A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.

determined on a subjective basis, brought about a wholly new and different scheme affecting the placement and transfer of prisoners, and thus did not fall within the statutory exemption for operational forms.⁷

The Department argues that PML 2005–024 simply instructs employees completing the Dental Plan Enrollment Authorization form (STD. 692) that they can only recover six months worth of retroactive dental premiums from the date of the form and is therefore exempt from the APA pursuant to section 11340.9(c). The Department asserts that the PML 2005–024, as distinguished from the administrative bulletins in *Stoneham*, does not present a wholly new and different scheme affecting state employees because they were already subject to an identical limitation for health care premiums.⁸

The existing scheme to which the Department refers is section 599.502(f)(2) of title 2 of the California Code of Regulations (CCR). Section 599.502(f)(2) was adopted by the Public Employees Retirement System (CalPERS) implementing the Public Employees’ Medical and Hospital Care Act (section 22750). This properly adopted regulation applies only to health care premiums and not dental premiums. The fact that CalPERS has a regulation that establishes a limitation on the reimbursement of excess health care premiums paid does not mean that the Department has the authority to enforce a similar rule concerning dental premiums without going through the APA rulemaking process. If OAL were to accept this argument by the Department, the Department would be able to use any regulation adopted by any other state agency that affects state employees without going through the APA rulemaking process. Government Code section 11340.5(a), however, prohibits a state agency from doing exactly that.

The Department also states that PML 2005–024 “was issued to **instruct** employees completing a Dental Plan Enrollment Authorization (STD. 692) that they will not be able to recover any premiums deducted from their monthly pay prior to six months from the date that the form is completed.” (Emphasis added.) Section

11340.9(c) provides that “any instructions relating to the use of a form” are exempt from the rulemaking requirements of the APA. Section 11340.9(c) continues, however, that “. . . this provision is not a limitation on any requirement that a regulation be adopted pursuant to [the APA] when one is needed to implement the law under which the form is issued.” A rule stating that employees will not be able to recover any dental premiums deducted from their monthly pay prior to six months from the date that the form is completed does not constitute “instructions” to employees on the use of the form, i.e., how to fill it out, or explain what it is used for. The PML 2005–024 was issued to “inform” state employees of the rule that there is a six-month limitation on reimbursement of excess dental premiums paid. As found above, the PML 2005–024 rule is a general rule that implements, interprets, or makes specific section 22959. It does not constitute instructions relating to the use of a form, and therefore, does not fall within the “forms” exemption of 11340.9(c).

2. Department Asserts Its Action Was Not Quasi-Legislative

The second assertion by the Department is that it was not acting in a quasi-legislative manner when it issued PML 2005–024 and that instead it was merely applying and/or interpreting an existing regulation, title 2 CCR section 559.502(f)(2)(C), as well as provisions found in a Memorandum of Understanding (MOU)⁹ and thereby acting in its role as administrator of State Employee Dental Plans pursuant to section 22959. Since the term “quasi-legislative” is not defined in the California APA, we look to the judicial definition of the term to determine whether the challenged action reflects the exercise of quasi-legislative power. *Tidewater* states that “A written statement of policy that an agency intends to apply generally, that is unrelated to a specific case, and that predicts how the agency will decide future cases is essentially legislative in nature even if it merely interprets applicable law.”¹⁰ Using this definition of quasi-legislative, the rule found in PML 2005–024 contains a written statement of policy that the Department intends to apply generally to state employees with dental care coverage and predicts how the Department will decide

⁷ Department’s Response to Petition, p. 2.

⁸ Title 2, California Code of Regulations, section 599.502(f)(2)(C):

. . . When a mandatory change of enrollment results in a retroactive cancellation or deletion of enrollment and creates a difference in premium based on the date a family member became ineligible for coverage and the date an employee or annuitant changed his or her enrollment to delete the ineligible family member, the employer and employee or annuitant may receive a refund. **The amount of the refund shall not exceed those excess premiums paid for a period of up to six months prior to the date on which the action is processed and recorded, pursuant to the employee’s or annuitant’s request for retroactive cancellation or deletion of the ineligible family member.** (Emphasis added.)

⁹ A Memorandum of Understanding is an agreement reached pursuant to the Ralph C. Dills Act (“Dills Act”). The Dills Act sets forth the statutory law governing relations between the state and its employees. One purpose of the Dills Act is “. . . to promote full communication between the state and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the state and public employee organizations.” Government Code section 3512.

¹⁰ *Id* at 574–575

future cases. Therefore, it is a quasi-legislative action on the part of the Department and is subject to the APA.

Turning now to the argument that PML 2005–024 is merely an application of an existing regulation, it is necessary to look at the regulation in question, title 2, California Code of Regulations section 599.502(f)(2)(C). Section 599.502(f)(2)(C) states:

When a mandatory change of enrollment results in a retroactive cancellation or deletion of enrollment and creates a difference in premium based on the date a family member became ineligible for coverage and the date an employee or annuitant changed his or her enrollment to delete the ineligible family member, the employer and employee or annuitant may receive a refund. **The amount of the refund shall not exceed those excess premiums paid for a period of up to six months prior to the date on which the action is processed and recorded, pursuant to the employee’s or annuitant’s request for retroactive cancellation or deletion of the ineligible family member.** (Emphasis added.)

Section 599.502(f)(2)(C) was adopted by the California Public Employees Retirement System to implement, interpret or make specific the Public Employees’ Medical and Hospital Care Act (section 22750). In contrast, the challenged rule in PML 2005–024 implements, interprets or makes specific section 22959 of the State Employees’ Dental Care Act. The Department’s application of a CalPERS health care regulation to dental benefits administered by the Department does not constitute a mere restatement of law. The CalPERS regulation does not apply to dental premiums, nor was it adopted by the Department.

The Department also argues that PML 2005–024 merely interprets preexisting provisions found in MOU’s. The Department points to the MOU for Bargaining Unit 4, “. . . Section 9.2(B) of Bargaining Unit 4’s MOU states: ‘Employee eligibility for dental benefits is the same as that prescribed for health benefits under section 9.1 of this Contract.’ Section 9.1(D) of Bargaining Unit 4’s MOU states: ‘Employee Eligibility — for purposes of this section, ‘eligible employee: shall be defined by the Public Employee’s Medical and Hospital Care Act.’ ”¹¹ The Department states that this language or similar language exists in all state MOU’s. However, the issue, here, is not *eligibility* for benefits, but rather the ability of state employees to recover retroactive dental premiums. Even if OAL were to accept the assertion that the language in the MOU exists in all MOU’s, it is unclear how *eligibility* for health care or dental insurance relates to the rule that limits employees’ ability to

receive retroactive dental premiums to a period of six months. OAL finds that the rule stated in PML 2005–024 is not a restatement of existing law.

3. Department Asserts Notice Given Satisfies APA

Finally, the Department argues that even if OAL finds that PML 2005–024 is a regulation within the meaning of the APA, all of the safeguards of APA rulemaking requirements were met because employees were given ample notice of the limitation on dental premium reimbursement. PML 2005–024 was issued five months before its effective date and the Department states that it did not receive any “feedback” from employees concerned with the six month limitation. We reject the assertion that issuing a memo five months prior to a change in policy and posting the document on a departmental webpage constitutes compliance with the requirements of the APA. As *Tidewater* states:

The APA establishes the procedures by which state agencies may adopt regulations. The agency must give the public notice of its proposed regulatory action (Gov.Code, §§ 11346.4, 11346.5); issue a complete text of the proposed regulation with a statement of the reasons for it (Gov.Code, § 11346.2, subds.(a), (b)); give interested parties an opportunity to comment on the proposed regulation (Gov.Code, § 11346.8); respond in writing to public comments (Gov.Code, §§ 11346.8, subd. (a), 11346.9); and forward a file of all materials on which the agency relied in the regulatory process to the Office of Administrative Law (Gov.Code, § 11347.3, subd. (b)), which reviews the regulation for consistency with the law, clarity, and necessity (Gov.Code, §§ 11349.1, 11349.3).

The Department did not comply with the rulemaking procedures established by the APA. The mere issuance of PML 2005–024 does not provide the notice required by sections 11346.4 and 11346.5 nor does it afford the public the opportunity for a hearing pursuant to section 11346.8(a). PML 2005–024 was not reviewed or approved by OAL. The Department failed to satisfy in whole or in part the requirements of APA rulemaking in any substantive manner when it issued PML 2005–024.

CONCLUSION

PML 2005–024 meets the definition of a “regulation” as found in section 11342.600, does not fall within any express APA exemption, and therefore, it should have been adopted pursuant to the APA.

¹¹ Department’s Response to Petition, p. 3, fn 2.

Date: May 19, 2008

/s/
Peggy J. Gibson
Staff Counsel

/s/
Susan Lapsley
Director

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225

**Department of Personnel Administration
Memorandum**

TO: Personnel Management Liaisons (PML)

| | |
|---|-------------------------------|
| SUBJECT: Six Month Limitation of Retroactive Dental Premium Reimbursements | REFERENCE NUMBER: 2005-024 |
| DATE ISSUED: 08/09/05 | SUPERSEDES: |

This memorandum should be forwarded to:

**Personnel Officers
Personnel Transation Supervisors
Personnel Transactions Staff**

FROM: Department of Personnel
Administration
Benefits Division

CONTACT: William Page, Staff Personnel
Program Analyst
(916) 445-9801
Fax: (916) 322-3769
Email: WilliamPage@DPA.CA.GOV

This memo provides information regarding a limitation of retroactive dental premium reimbursements, in accordance with the recent regulation amendments which limit reimbursement of health premiums (See CalPERS Circular Letter, 600-215-05, dated April 29, 2005). The following changes will impact all mandatory cancellations and/or deletions to employees' State-sponsored dental coverage.

Effective January 1, 2006, retroactive premiums for mandatory cancellations and/or deletions to employees' dental coverage will be reimbursed for a maximum period of six months. Personnel Offices should communicate the importance of submitting dental enrollment changes to their departments in a timely manner. Personnel Offices may also want to refer employees to the Dental Benefits Handbook for Active and Retired Employees on DPA's Web site at www.dpa.ca.gov (click on Benefits, then click on Dental Insurance, under Related Publications). To assist you in communicating information regarding the limitation of retroactive dental premium reimburse-

ments, we have provided you with a memo (Attachment II) that should be distributed to all your employees.

***COMPLETING THE DENTAL PLAN
ENROLLMENT AUTHORIZATION (STD. 692)***

When completing the Dental Plan Enrollment Authorization (STD. 692) for mandatory cancellations and/or deletions of coverage, the Personnel Office should continue to reflect the actual permitting event date that caused the loss of eligibility and the mandatory effective date/pay period, and forward the form to the State Controller's Office (SCO) for processing. When the form is processed by SCO, the premiums will be adjusted for a maximum period of six months.

The following example of how SCO will process a retroactive transaction is based on an employee who had a divorce (mandatory deletion of spouse) on 08/04/04, but did not report the divorce to the Personnel Office until 08/05/06.

| | |
|--|---|
| Example: STD. 692 signed by Personnel Office: | 08/05/06 |
| STD. 692 received at SCO: | 08/11/06 |
| Effective date shown in Section E-14 on STD. 692: | 09/01/04 |
| Six month retroactive effective date on SCO records: | Ex-spouse deleted 03/01/06 (02/06 pay period) |

The department and employee will not be able to recover any premiums paid prior to the 03/01/06 retroactive effective date (02/06 pay period). Additionally, the employee may be responsible for any dental services that have been incurred by the ex-spouse from 03/01/06 through 09/01/06 and any services incurred after the

deletion is processed (if the ex-spouse continues to use this coverage).

**DENTAL PROGRAM PERMITTING EVENT
CODES IMPACTED BY CHANGE**

Attachment I lists the dental program permitting event codes that will have a six month limitation of retroactive dental premium reimbursements when the STD. 692 is processed by SCO.

IMPACT ON VISION ENROLLMENT

State employees' vision coverage is automatically established for eligible employees and their eligible dependents and no form is required to delete ineligible dependents. Therefore, employees need to continue to ensure that only eligible dependents are provided services under their State-sponsored vision plan.

PERSONNEL OFFICES

Please ensure that your employees are made aware of this change and the importance of making timely deletions of ineligible dependents to their dental coverage. Thank you for your cooperation. If you have any questions regarding this information, you may contact William Page, Staff Personnel Program Analyst, at (916) 445-9801.

/s/Debbie Endsley

Debbie Endsley, Division Chief
Benefits Division

Attachment

**SUSPENSION OF
ACTION REGARDING
UNDERGROUND REGULATIONS**

OFFICE OF ADMINISTRATIVE LAW

**SUSPENSION OF ACTION REGARDING
UNDERGROUND REGULATIONS**

**(Pursuant to Title 1, section 280, of the
California Code of Regulations)**

**CTU 2007-1219-07, Department of Corrections
and Rehabilitation**

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

On December 19, 2007, the Office of Administrative Law (OAL) received a petition challenging a Department of Corrections and Rehabilitation (CDCR) memorandum as an underground regulation. Deputy Director Memorandum (Memorandum) dated September 1, 2005 prohibited in-level transfers of inmates to other institutions except for transfers based on medical or mental health necessity, or required to maintain the safety and security of the institution.

OAL accepted the petition, which was published in the March 7, 2008 California Notice Register (Register 2008, No. 10-Z).

On May 20, 2008, CDCR certified to OAL that the September 1, 2005 Memorandum has been rescinded and is no longer being enforced. OAL has suspended all action on this petition as required under Title 1, California Code of Regulations, section 280.

The attachments to the CDCR section 280 certification are not being printed for practical reasons or space considerations. Please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov if you would like to view the attachments. Photocopying charges may apply.

Memorandum

Date: May 15, 2008

To: Susan Lapsley
Director
Office of Administrative Law

Subject: **PETITION OF INMATE ALDRETE,
J-25863, REGARDING IN-LEVEL
TRANSFER POLICY**

This memorandum shall serve as certification that Deputy Director (DD) Memorandum, dated September 1, 2005, is no longer being enforced by the California Department of Corrections and Rehabilitation (CDCR). Specifically, the exception language that there continues to be no in-level transfers for inmates unless there was a medical/mental health necessity (of the inmate) or transfers required to maintain the safety and security of the institution, shall no longer apply as of April 29, 2008. The attached DD Memorandum dated April 29, 2008, clarifies CDCR policies and procedures related to inmate transfers. A copy of this certification is being forwarded to Inmate Raul Aldrete, J-25863, Petitioner.

/s/

ERIC ARNOLD
Chief
Classification Services Unit

Attachments

cc: Suzan Hubbard
Marisela Montes
Linda Barnett
Eric Arnold
Ross Meier
Regulation and Policy Management Branch
Raul Aldrete, J-25863, Petitioner

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2008-0404-01
AIR RESOURCES BOARD
In-Use Off-Road Diesel Vehicles

This rulemaking requires owners of In-Use Off-Road Diesel Vehicles to meet certain emission limitations by certain dates. The regulatory package addresses small fleets, medium fleets and large fleets (determined by total horsepower of the vehicles) that must meet certain emissions requirements. These requirements may be met by retrofitting the engines, repowering engines, purchasing newer, lower emission vehicles or operating higher polluting vehicles less often. The emission rates are for both diesel particulate matter (PM) and nitrogen oxides (NOx). Small fleets are exempt from the NOx emissions standard. All owners of vehicles must report their equipment and any retrofits already accomplished to ARB. Fleet owners are subject to civil penalties for noncompliance, unless the non-compliance is caused by manufacturer delays in retrofits or replacement engines.

Title 13
California Code of Regulations
ADOPT: 2449, 2449.1, 2449.2, 2449.3
Filed 05/16/2008
Effective 06/15/2008
Agency Contact: Amy Whiting (916) 322-6533

File# 2008-0422-03
BOARD OF BARBERING AND COSMETOLOGY
Message to Consumer

The Board of Barbering and Cosmetology is amending section 905, title 16, California Code of Regulations, in order to remove an old direct telephone number (due to the Board moving its physical office). However, they are leaving in the regulation their toll-free phone number.

Title 16
California Code of Regulations
AMEND: 905
Filed 05/20/2008
Effective 06/19/2008
Agency Contact: April Oakley (916) 575-7102

File# 2008-0409-02
BOARD OF EDUCATION
Highly Qualified Teachers — NCLB

The State Board of Education is adopting a new Subject Matter Verification Process for Middle and High School Level Teachers in Special Settings (VPSS) and amending regulations concerning definitions used in No Child Left Behind Teacher Requirements and the High Objective Uniform State Standard (HOUSSE) evaluation process.

Title 5
California Code of Regulations
ADOPT: 6105 AMEND: 6100, 6104
Filed 05/21/2008
Effective 06/20/2008
Agency Contact: Debra Strain (916) 319-0860

File# 2008-0409-05
BOARD OF OCCUPATIONAL THERAPY
Assessment of Administrative Fines

This regulatory action increases the maximum allowed administrative fine from \$2000 to \$2500 for the more serious Class "A" violations — those that resulted in or had significant potential for patient harm. It also adds a new Class "D" violation for a minor and technical violation. In addition, it allows the Executive Officer to further increase the fine up to \$5000 for violations if one or more of certain listed circumstances apply.

Title 16
California Code of Regulations
AMEND: 4141
Filed 05/21/2008
Effective 06/20/2008
Agency Contact: April Freeman (916) 322-3278

File# 2008-0409-07
BOARD OF PODIATRIC MEDICINE
Citations and Fine — Contest of Citations

This rulemaking action raises the ceiling on professional license fines from \$2,500 to \$5,000 consistent with amended California Business and Professions Code Section 125.9. It also adds two new violations to the list of violations for which fines may be imposed. Those are: failure to produce documents requested by the Attorney General or by the Board in connection with an investigation, and violation of a term or condition of license probation. The rulemaking also establishes four aggravating factors which the Board may use in determining whether to impose fines higher than \$2,500 and up to \$5,000.

Title 16
California Code of Regulations
AMEND: 1399.696, 1399.697
Filed 05/16/2008
Effective 06/15/2008
Agency Contact: Kathleen Cook (916) 263-0315

File# 2008-0428-06
CALIFORNIA ENERGY COMMISSION
Electric Transmission Corridor Designation Process

This action corrects internal cross-references in regulations adopted earlier this year for designating transmission corridor zones. Because the original file utilized numbers already in use in the CCR the agency changed the numbering. Consequently the cross-references point to incorrect sections. This nonsubstantive filing corrects the internal cross-references.

Title 20
California Code of Regulations
AMEND: 2323(a), 2323(b), 2323(c), 2323(d), 2323(e), 2323(f), 2325(a), 2329(c), 2329(e), 2330(a), 2332(d), 2333(a), 2335(b)
Filed 05/20/2008
Agency Contact: Arlene L. Ichien (916) 654-3959

File# 2008-0506-01
DEPARTMENT OF INSURANCE
Rate Approval

This file and print rulemaking makes revisions to regulations implementing the Proposition 103 prior approval rate process.

Title 10
California Code of Regulations
ADOPT: 2642.8, 2644.28 AMEND: 2642.6, 2642.7, 2644.2, 2644.3, 2644.6, 2644.7, 2644.8, 2644.12, 2644.16, 2644.17, 2644.19, 2644.20, 2644.21, 2644.23, 2644.25, 2644.27
Filed 05/16/2008
Effective 05/16/2008
Agency Contact: Lara Sweat (415) 538-4192

File# 2008-0411-01
FAIR POLITICAL PRACTICES COMMISSION
Reporting Independent Expenditures by Eligible 501(c)(3)/501(c)(4) orgs.

This certificate of compliance makes permanent the prior FPPC emergency regulatory action (OAL file no. 2007-1214-04FPPE) that adopted an event-based reporting alternative for an eligible 501(c)(4) organization that makes occasional independent expenditures from its general treasury to support or oppose a ballot measure in California. The certificate of compliance includes some modifications to the regulation, including adding eligible 501(c)(3) organizations.

Title 2
California Code of Regulations
ADOPT: 18413
Filed 05/14/2008
Agency Contact:
Virginia Latteri-Lopez (916) 324-3854

File# 2008-0403-01
FISH AND GAME COMMISSION
Method Authorized to Take Big Game and Methods of Take for Nongame

This action establishes the upper limit on the concentration of lead in lead free projectiles used to take big game, nongame birds and nongame mammals within the range of the California condor as specified in Fish and Game Code section 3004.5 in order to protect the condor from ingesting lead in the course of feeding on dead animals killed by hunting.

Title 14
California Code of Regulations
AMEND: 353, 475
Filed 05/15/2008
Effective 07/01/2008
Agency Contact: Sheri Tiemann (916) 654-9872

File# 2008-0422-01
MENDOCINO WINEGRAPE AND WINE COMMISSION
Conflict of Interest Code

This is a Conflict of Interest Code filing that was approved by the Fair Political Practices Commission and

is being submitted for filing with the Secretary of State and printing only.

Title 2
California Code of Regulations
ADOPT: 59580
Filed 05/21/2008
Effective 06/20/2008
Agency Contact: Jill S. England (916) 448-3826

File# 2008-0514-01
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD
Replace Graphics

This change without regulatory effect revises drawings of particle definitions to improve their clarity of display.

Title 8
California Code of Regulations
AMEND: 1529, 5208, 8358
Filed 05/19/2008
Agency Contact: Marley Hart (916) 274-5721

File# 2008-0514-02
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD
Replace Graphics

This change without regulatory effect revises illustrations of various bridging terminus used in steel construction to improve the clarity of display.

Title 8
California Code of Regulations
AMEND: 1710
Filed 05/19/2008
Agency Contact: Marley Hart (916) 274-5721

File# 2008-0514-03
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD
Replace Graphics

This change without regulatory effect revises illustrations in various safety orders to improve the clarity of display.

Title 8
California Code of Regulations
AMEND: 797, 1604.10, 1601.21, 1662
Filed 05/19/2008
Agency Contact: Marley Hart (916) 274-5721

File# 2008-0424-02
PROFESSIONAL FIDUCIARIES BUREAU
Code of Ethics and Education Criteria

Senate Bill 1550 (Figueroa, Chapter 491, Stats. 2006) created the new Professional Fiduciaries Bureau (Bureau) within the Department of Consumer Affairs (Department). The Bureau is required to license and regulate specified fiduciaries under the Professional Fiduciaries Act (Act) that represent a particularly vulnerable consumer population. This filing is a certificate of compliance for an emergency regulatory action which adopted preclicensing education requirements, continuing education requirements, and a code of ethics for these professional fiduciaries.

Title 16
California Code of Regulations
ADOPT: 4440, 4442, 4443, 4444, 4446, 4448, 4450, 4452, 4470, 4472, 4474, 4476, 4478, 4480, 4482, 4484
Filed 05/19/2008
Effective 05/19/2008
Agency Contact: Mellonie Yang (916) 574-7340

CCR CHANGES FILED WITH THE SECRETARY OF STATE WITHIN DECEMBER 19, 2007 TO MAY 21, 2008

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

04/24/08 AMEND: Appendix A
02/25/08 ADOPT: 48, 50, 52 AMEND: 55
01/29/08 AMEND: 1, 6, 90, and Appendix A (Std. Form 400)

Title 2

05/21/08 ADOPT: 59580
05/14/08 ADOPT: 18413
05/13/08 ADOPT: 59620
05/06/08 AMEND: 43000, 43001, 43002, 43003, 43004, 43005, 43006, 43007, 43008, 43009
04/30/08 AMEND: 1859.2, 1859.61, 1859.81, 1859.82, 1859.83, 1859.202, 1866, Form SAB 50-04 (Rev. 01/08)
04/29/08 ADOPT: 1859.190, 1859.191, 1859.192, 1859.193, 1859.193.1, 1859.194, 1859.195, 1859.196, 1859.197, 1859.198, 1859.199 AMEND: 1859.2, 1859.51, 1859.81, Form SAB 50-04 (Revised 01/08), Form SAB 50-05

(Revised 01/08), Form SAB 50–10
(Revised 01/08)
04/24/08 ADOPT: 1183.081, 1183.131, 1183.30,
1183.31, 1183.32 AMEND: 1181.1,
1181.2, 1181.3, 1183, 1183.01, 1183.04,
1183.08, 1183.11, 1183.13, 1183.14,
1183.3, 1188.3
04/10/08 AMEND: 1866, 1866.4.3, 1866.13, Form
SAB 40–22 (Rev. 10/07)
04/09/08 AMEND: 18997
03/28/08 ADOPT: 59630
03/24/08 AMEND: 18735
03/19/08 AMEND: 55300
03/19/08 AMEND: 549.90
03/19/08 AMEND: 18200
03/03/08 AMEND: 1859.76, 1859.83, 1859.104.3
02/25/08 AMEND: 549.80
02/25/08 AMEND: 714
01/07/08 AMEND: 1859.2, 1859.43, 1859.50,
1859.51, 1859.81, 1859.106
01/07/08 AMEND: 18531.61
01/03/08 ADOPT: 547.69, 547.70, 547.71
AMEND: 547.69 renumbered as 547.72,
547.70 renumbered as 547.74, 547.71
renumbered as 547.73
12/26/07 AMEND: div. 8, ch. 54, sec. 54300
12/19/07 ADOPT: 18413

Title 3

05/07/08 AMEND: 3434(b)
05/05/08 AMEND: 3406(b)
05/02/08 AMEND: 3417(b)
05/02/08 AMEND: 3434
04/30/08 AMEND: 3591.20
04/23/08 AMEND: 6550
04/21/08 AMEND: 3700
04/18/08 AMEND: 3434(b)
04/16/08 AMEND: 3434(b) & (c)
04/15/08 AMEND: 3433(b)
04/08/08 AMEND: 3434(b)
04/02/08 AMEND: 3433(b)
04/02/08 AMEND: 3433(b)
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03/21/08 AMEND: 3434(b)
03/19/08 AMEND: 6620
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03/04/08 AMEND: 3867
03/03/08 AMEND: 3591.20
02/22/08 AMEND: 3434(b)
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02/11/08 AMEND: 3434(b)
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6451, 6451.1, 6452, 6452.1, 6452.2,
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6452.3(d), 6452.3(e), 6452.3(f), 6452.4,
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8102.4, 8102.5, 8102.6, 8102.7, 8102.8,
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01/22/08 AMEND: 8070, 8072, 8073
01/10/08 AMEND: 1632
12/26/07 AMEND: 12002, 12122, 12202,
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15444, 15445, 15446, 15447, 15448,

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| 05/05/08 | ADOPT: 11315.5 and 11315.6 AMEND: 11315 | | Article 87, Sections 2587.1 through 2587.5; Article 88, Sections 2588.1 through 2588.3; Article 89, Sections 2589.1 and 2589.2. AMEND: 2300, 2305.2, 2305.4, 2340.9, 2340.11, 2340.13, 2340.16, Table 2340.16, 2340.17, 2340.18, 2340.21, 2340.22; Article 5, Section 2350.2; Sections 2375.1, 2375.18, Table 2375.18, Sections 2375.19, 2390.1, 2390.24, 2390.41, 2390.81, 2395.3, 2395.5, 2395.6, 2395.23, 2395.25, 2395.32, 2395.42, 2395.44, 2395.45, 2395.57, 2395.58, 2405.1, 2405.2; Article 16, Sections 2420.3; Article 45; Sections 2480.6, 2480.7, 2484.24, 2500.7, 2500.8, 2500.9, 2500.10, 2500.11, 2500.23, 2505.10, 2505.11, 2510.4, 2510.5, 2510.6, 2510.7, 2510.56, 2510.58, 2522.2, 2530.4, 2530.102, 2530.103, 2530.104, 2530.107, 2530.112, 2533.1, 2534.6, 2534.8, 2540.1, 2540.2, 2540.3, 2540.4, 2560.2, 2561.1, 2561.3, 2561.31, 2561.32, 2563.23, 2563.33; Article 77, Section 2565.3; Sections 2568.8, 2568.15, 2569.1, 2569.6, 2569.7, 2569.20, 2569.51; Article 80, Sections 2571.1 and 2571.16. REPEAL: 2340.23, 2350.11, 2390.83, 2395.7, 2395.33, 2395.43, 2395.50, 2480.8, 2522.8 and 2561.50. |
| 05/01/08 | AMEND: 80440, 80443 | | |
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| 04/21/08 | ADOPT: 18134 | | |
| 03/03/08 | ADOPT: 9510.5, 9512, 9513, 9514, 9525 AMEND: 9510, 9511, 9515, 9516, 9517, 9518, 9519, 9521, 9522, 9523, 9524, 9527, 9528, 9529, 9530 REPEAL: 9517.1, 9520 | | |
| 02/28/08 | ADOPT: 11969.10, 11969.11 AMEND: 11969.1, 11969.2, 11969.3, 11969.4, 11969.6, 11969.7, 11969.8, 11969.9 | | |
| 02/25/08 | AMEND: 41301 | | |
| 02/22/08 | AMEND: 3051.16, 3065 | | |
| 12/20/07 | ADOPT: 1202 AMEND: 1200, 1204, 1204.5, 1205, 1207, 1207.1, 1207.2, 1207.5, 1209, 1210, 1211, 1211.5, 1215, 1215.5, 1216, 1217, 1218, 1219, 1225 | | |
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| 05/19/08 | AMEND: 1529, 5208, 8358 | | |
| 05/19/08 | AMEND: 1710 | | |
| 05/19/08 | AMEND: 797, 1604.10, 1601.21, 1662 | | |
| 05/05/08 | ADOPT: 2340.2, 2340.5, 2340.8, 2340.10, 2340.12, 2340.14; Article 6, Sections 2360.1 through 2360.5; Sections 2375.7, 2375.25, 2380.1, 2390.10, 2390.20, Article 12, Sections 2400.1, 2400.2; Sections 2418.2, 2418.3, 2418.4, 2418.5, 2418.6, 2420.4, 2420.5, 2420.6, 2420.7, 2473.1, 2473.2, 2480.5, 2480.9, 2484.5, 2484.6; Article 48.1, Sections 2485.1, 2485.2; Sections 2505.2, 2510.8, 2522.20, 2530.120, 2530.121; Article 58.1, Section 2535.1; Sections 2540.11, 2540.11 Figure S-1, 2560.3; Article 74.1, Sections 2562.1 through 2562.7; Article 77.1, Sections 2566.1 through 2566.3; Article 77.2, Sections 2567.1 through 2567.3; Sections 2569.5, 2571.9, 2571.30; Article 83, Sections 2583.1 through 2583.8; Article 84, Sections 2584.1 through 2584.8; Article 85, Sections 2585.1 through 2585.3; Article 86, Sections 2586.1 through 2586.4; | 04/11/08 | AMEND: 7016(c) |
| | | 04/07/08 | AMEND: 10116, 10116.1, 10117.1, 10118.1, 10119, 10120, 10121, 10136, 10137, 10225, 10225.1, 10225.2 |
| | | 04/01/08 | ADOPT: 3140, 3141, 3141.1, 3141.2, 3141.3, 3141.4, 3141.5, 3141.6, 3141.7, 3141.8, 3141.9, 3141.10, 3141.11, 3141.12, 3141.13, 3142, 3142.1, 3142.2, 3143, 3144, 3145, 3146 AMEND: 3000, 3001, 3009, 3094.2, 3120.6, 3137 |
| | | 03/05/08 | AMEND: 1504, 1597 |
| | | 03/05/08 | AMEND: 3228 |
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| | | 03/06/08 | AMEND: 10025, 10057, 10515, 10518, 10524, 10545, 10550, 10606, 11014, 11017, 11024, 13070 |
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3200.240, 3200.250, 3200.260,
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03/12/08 ADOPT: 2699.402 AMEND: 2699.100,
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2699.6608, 2699.6613, 2699.6625,
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02/14/08 ADOPT: 2790.8, 2790.9
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04/28/08 ADOPT: 17987, 17987.1, 17987.2,
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04/28/08 AMEND: 815.05
04/25/08 AMEND: 17210.2, 17210.4, 17855.2,
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04/07/08 AMEND: 228(b)(1)
04/04/08 AMEND: 27.80
03/26/08 AMEND: 630
03/14/08 ADOPT: 13255.1 AMEND: 13055,
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02/28/08 ADOPT: 749.3
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02/11/08 ADOPT: 787.0, 787.1, 787.2, 787.3,
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12/26/07 ADOPT: 2990, 2995, 2997 AMEND:
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05/02/08 AMEND: 1079.2
04/29/08 AMEND: 1970, 1970.4(a), 1973(b)
04/24/08 AMEND: 1387.3
04/24/08 AMEND: 3000
04/17/08 AMEND: 1399.660
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03/12/08 AMEND: 1435.2
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02/15/08 AMEND: 30, 95, 95.2, 95.6
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93120.3, 93120.4, 93120.5, 93120.6,
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04/11/08 ADOPT: 30333.05, 30333.07, 30333.3,
30335.1, 30335.2, 30335.3, 30335.4,
30335.5, 30335.6, 30335.10, 30336.1,
30336.5, 30336.6, 30336.7, 30336.8,
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| 04/02/08 | AMEND: 93119 | | |
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| 03/04/08 | ADOPT: 100400, 100401, 100402, 100403, 100404, 100405, 100406, 100407, 100408, 100409, 100410 | | |
| 02/19/08 | AMEND: 70100.1, 70200 | | |
| 02/14/08 | ADOPT: 30410, 30410.2 AMEND: 30421, 30424, 30445, 30447 | | |
| 02/13/08 | AMEND: 2500, 2502 | | |
| 02/06/08 | ADOPT: 2641.56, 2641.57 AMEND: 2641.5, 2641.30, 2641.35, 2641.45, 2641.55, 2643.5, 2643.10, 2643.15 REPEAL: 2641.75, 2641.77 | | |
| 02/06/08 | ADOPT: 2641.56, 2641.57 AMEND: 2641.5, 2641.30, 2641.35, 2641.45, 2641.55, 2643.5, 2643.10, 2643.15 REPEAL: 2641.75, 2641.77 | | |
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| 04/10/08 | AMEND: 1570 | | |
| 02/29/08 | AMEND: 25128-1 | | |
| 01/24/08 | AMEND: 1699 | | |
| 01/23/08 | AMEND: 101, 171 | | |
| 01/23/08 | AMEND: 101, 171 | | |
| 01/07/08 | ADOPT: (new Division 2.1) 5000, 5200, 5201, 5202, 5210, 5210.5, 5211, 5212, 5212.5, 5213, 5214, 5215, 5215.4, 5215.6, 5216, 5217, 5218, 5219, 5220, 5220.4, 5220.6, 5221, 5222, 5222.4, 5222.6, 5223, 5224, 5225, 5226, 5227, 5228, 5229, 5230, 5231, 5231.5, 5232, 5232.4, 5232.6, 5232.8, 5233, 5234, 5234.5, 5235, 5236, 5237, 5238, 5239, 5240, 5241, 5242, 5243, 5244, 5245, 5246, 5247, 5248, 5249, 5249.4, 5249.6, 5250, 5260, 5261, 5262, 5263, 5264, 5265, 5266, 5267, 5268, 5270, 5271, 5310, 5311, 5312, 5321, 5322, 5322.5, | 01/04/08 | AMEND: 1521 |
| | | 01/02/08 | AMEND: 1802 |
| Title 19 | | | |
| 04/23/08 | ADOPT: 2660 AMEND: 2720, 2723, 2724, 2725, 2726, 2728 | | |
| 02/20/08 | AMEND: Division 2, Chapter 4, Article 4, Section 2729.2 and Appendices A I, II, III and Appendices B I, II, III | | |
| 02/05/08 | REPEAL: 3.33 | | |
| 02/04/08 | AMEND: 208, 209 | | |
| Title 20 | | | |
| 05/20/08 | AMEND: 2323(a), 2323(b), 2323(c), 2323(d), 2323(e), 2323(f), 2325(a), | | |

| | | |
|----------------------|---|--|
| | 2329(c), 2329(e), 2330(a), 2332(d), 2333(a), 2335(b) | 87228, 87229, 87230, 87231, 87235, 87236, 87340, 87342, 87342.1, 87343, 87344, 87345, 87346, 87451, 87452, 87453, 87454, 87455, 87455.1, 87457, 87458, 87560, 87561, 87562, 87564, 87564.2, 87564.3, 87564.4, 87564.5, 87565, 87566, 87567, 87568, 87569, 87570, 87571, 87572, 87573, 87574, 87575, 87575.1, 87575.2, 87576, 87577, 87578, 87579, 87580, 87581, 87582, 87583, 87583.1, 87584, 87585, 87586, 87587, 87588, 87589, 87590, 87591, 87592, 87593, 87686, 87689, 87690, 87691, 87692, 87700, 87701, 87701.1, 87701.2, 87701.3, 87701.5, 87702, 87702.1, 87703, 87704, 87705, 87706, 87707, 87708, 87709, 87710, 87711, 87713, 87716, 87716.1, 87720, 87721, 87722, 87724, 87725, 87725.1, 87730, 87730.1, 87730.2, 87731, 87731.1, 87731.2, 87731.3, 87731.4, 87755, 87756, 87757, 87758, 87759, 87761, 87763, 87766, 87768, 87769, 87775, 87777, 87785, 87786, 87787, 87788, 87789, 87791, 87792, 87793 REPEAL: 87725.2 |
| 04/15/08 | ADOPT: 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, Appendix A | |
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| 02/15/08 | AMEND: 1575 | |
| 01/10/08 | AMEND: 6662.5, 6663(b), 6753, 6754(b)(2) | |
| Title 22 | | |
| 05/08/08 | ADOPT: 66260.201 AMEND: 66260.10, 66261.9, 66273.1, 66273.3, 66273.6, 66273.8, 66273.9, 66273.12, 66273.13, 66273.14, 66273.20, 66273.32, 66273.33, 66273.34, 66273.40, 66273.51, 66273.53, 66273.56, 66273.82, 66273.83, 66273.90, Appendix X to Chapter 11 | |
| 05/06/08 | ADOPT: 72038, 72077.1, 72329.1 AMEND: 72077, 72329 | |
| 04/18/08 | AMEND: 4410 REPEAL: 4410.5 | |
| 04/15/08 | AMEND: 50960.2, 50960.4, 50960.6, 50960.9, 50960.12, 50960.15, 50960.21, 50960.23, 50960.26, 50960.29, 50960.32, 50960.34, 50960.36, 50962, 50963, 50964, 50965, 50966 | |
| 03/27/08 | AMEND: 12705(b) | |
| 03/18/08 | AMEND: 12000 | |
| 03/03/08 | AMEND: 926-3, 926-4, 926-5 | |
| 02/28/08 | AMEND: 51000.3, 51000.30, 51000.50 | |
| 02/08/08 | ADOPT: 64551.10, 64551.20, 64551.30, 64551.35, 64551.40, 64551.60, 64551.70, 64551.100, 64552, 64554, 64556, 64558, 64560, 64560.5, 64561, 64570, 64572, 64573, 64575, 64576, 64577, 64578, 64580, 64582, 64583, 64585, 64591, 64600, 64602, 64604 AMEND: 64590, 64593, 64654, 64658 REPEAL: 64417, 64555, 64560, 64562, 64563, 64564, 64566, 64568, 64570, 64600, 64602, 64604, 64612, 64622, 64624, 64626, 64628, 64630, 64632, 64634, 64636, 64638, 64640, 64642, 64644 | |
| 02/06/08 | AMEND: 2708(c)-1 | |
| 02/06/08 | AMEND: 2708(c)-1 | |
| 01/08/08 | ADOPT: 7107, 7118 AMEND: 7314 | |
| Title 22, MPP | | |
| 03/05/08 | AMEND: 87101, 87102, 87106, 87107, 87110, 87111, 87112, 87113, 87114, 87115, 87116, 87117, 87118, 87218, 87219, 87219.1, 87220, 87222, 87223, 87224, 87225, 87226, 87227, 87227.1, | |
| 12/31/07 | ADOPT: 86500, 86501, 86501.5, 86505, 86505.1, 86506, 86507, 86508, 86509, 86510, 86511, 86512, 86517, 86518, 86519, 86519.1, 86519.2, 86520, 86521, 86522, 86523, 86524, 86526, 86527, 86528, 86529, 86531, 86531.1, 86531.2, 86534, 86535, 86536, 86540, 86542, 86544, 86545, 86546, 86552, 86553, 86554, 86555, 86555.1, 86558, 86559, 86561, 86562, 86563, 86564, 86565, 86565.2, 86565.5, 86566, 86568.1, 86568.2, 86568.4, 86570, 86572, 86572.1, 86572.2, 86574, 86575, 86576, 86577, 86578, 86578.1, 86579, 86580, 86586, 86587, 86587.1, 86587.2, 86588 AMEND: 11-400c, 11-402, 45-101(c), 45-202.5, 45-203.4, 45-301.1 | |
| Title 23 | | |
| 05/13/08 | ADOPT: 3919.3 | |
| 05/12/08 | AMEND: 3947 | |
| 05/12/08 | AMEND: 3939.22 | |
| 03/10/08 | ADOPT: 3919.2 | |
| 02/28/08 | ADOPT: 3919.1 | |
| 02/11/08 | ADOPT: 3939.27 | |
| 02/08/08 | ADOPT: 3939.28 | |
| 02/08/08 | ADOPT: 3939.30 | |
| 02/05/08 | ADOPT: 3939.29 | |
| 01/24/08 | ADOPT: 3939.31 | |

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04/02/08 ADOPT: 7201, 7205, 7205.1, 7205.2,
7205.3, 7206, 7207, 7209, 7211, 7215,
7225, 7231 AMEND: 7200, 7202, 7204,
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7210, 7212, 7218 (renumbered to 7217),
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15187.1, 15190, 15200, 15210, 15220,
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15280, 15290, 15300, 15310, 15330,
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02/25/08 ADOPT: 21815 AMEND: 21780, 21790,
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01/10/08 AMEND: 1300.67.60